

LOCAL
GOVERNMENT LAW
AND
ADMINISTRATION

VOLUME XI

LOCAL GOVERNMENT LAW AND ADMINISTRATION IN ENGLAND AND WALES

By
THE RIGHT HONOURABLE THE
LORD MACMILLAN
A LORD OF APPEAL IN ORDINARY
AND OTHER LAWYERS

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THE ENGLISH AND EMPIRE DIGEST

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Mullis v. Hubbard, [1903] 2 Ch. 431; 26 Digest 559, 2542.

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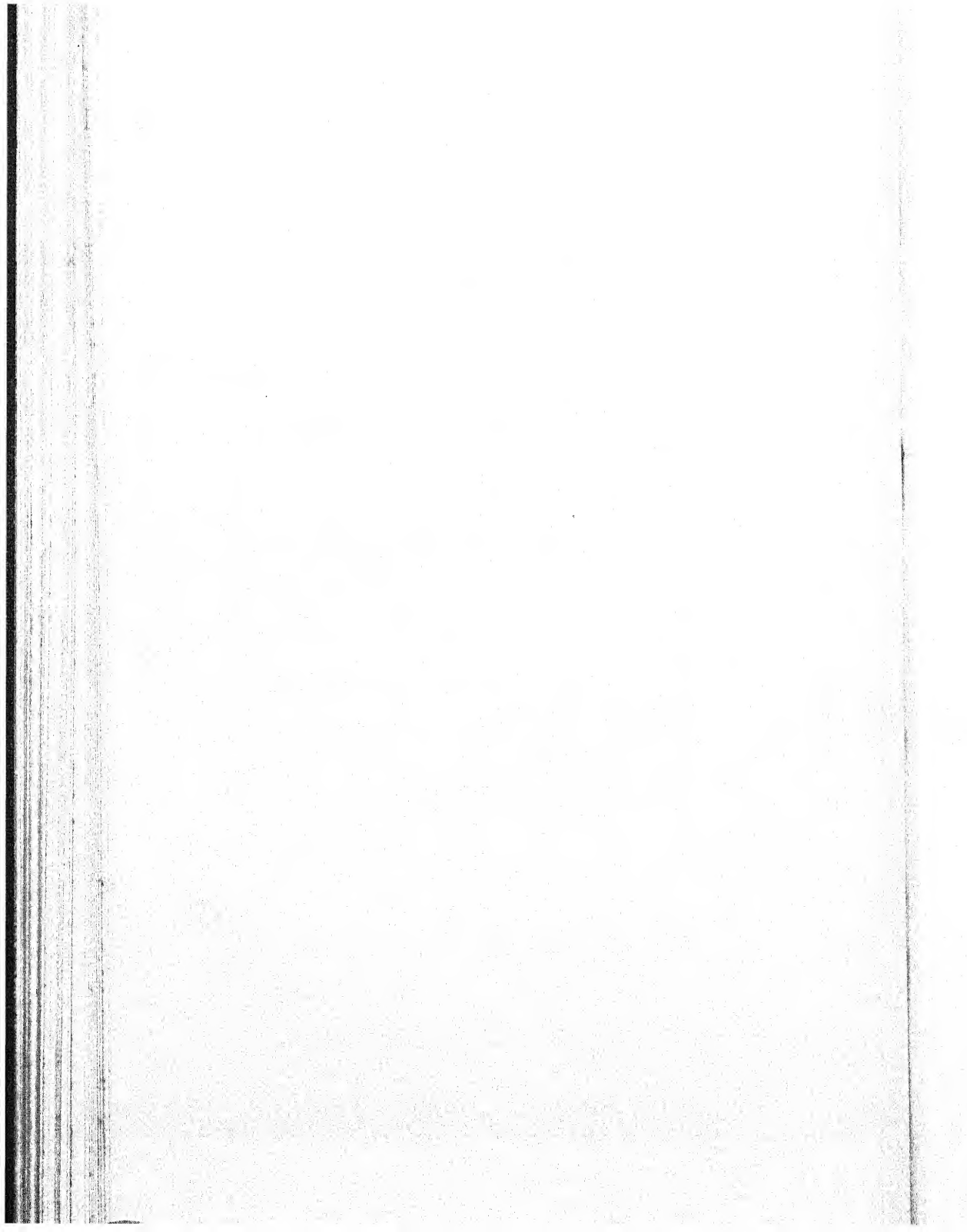
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PUBLIC ASSISTANCE

See also titles :

CASE PAPER SYSTEM ;
CASUALS ;
CHAPLAINS ;
GUARDIANS COMMITTEE ;
INSTITUTIONAL RELIEF ;
JOINT POOR LAW COMMITTEES ;
JOINT VAGRANCY COMMITTEE ;
MEANS TEST ;
OUTDOOR RELIEF ;
PERSONS OF UNSOUND MIND ;
POOR LAW MEDICAL OFFICERS ;
POOR LAW OFFENCES ;

PUBLIC ASSISTANCE AUTHORITIES ;
PUBLIC ASSISTANCE COMMITTEE ;
PUBLIC ASSISTANCE IN LONDON ;
PUBLIC ASSISTANCE INSTITUTION ;
PUBLIC ASSISTANCE INSTITUTION MASTER ;
PUBLIC ASSISTANCE OFFICER ;
RECOVERY OF POOR RELIEF ;
RELIEVING OFFICER ;
SETTLEMENT AND REMOVAL ;
UNEMPLOYMENT ;
VAGRANCY .

The first statutory recognition of the term " Public Assistance " is believed to be contained in the L.G.A., 1929 (*a*), which provided for the appointment of a public assistance committee by the council of each county and county borough. The poor law functions of the boards of guardians were transferred to these councils by sect. 1 (*b*). In this work the term " Public Assistance " is used in its limited meaning as relating to the poor law functions to be discharged by a public assistance authority.

As the successors of the boards of guardians, the councils of counties and county boroughs are responsible for the administration of the Poor Law Act, 1930, and the orders of the Minister made thereunder (*c*). The duties are mainly discharged by the public assistance committees above mentioned, who have such delegated powers as may be conferred by the council's administrative scheme (*d*).

For the general powers and duties of public assistance authorities see that title, and for the functions of public assistance committees and guardians committees reference should be made to these titles. Guardians committees are appointed in counties under sect. 5 of the Poor Law Act, 1930 (*e*). Public assistance committees are appointed both in counties and county boroughs. [1]

Officers are appointed specially for the purpose of poor law administration and their appointments are regulated by the Poor Law Act, 1930, and the Public Assistance Order, 1930 (*c*). Certain categories of officers are termed senior poor law officers (*f*). The appointing councils have not full control over the dismissal or the reduction of salary of such officers.

The duties and responsibilities of the most important of these officers are dealt with in the titles CHAPLAINS, POOR LAW MEDICAL OFFICERS, PUBLIC ASSISTANCE OFFICER, RELIEVING OFFICER and PUBLIC ASSISTANCE INSTITUTION MASTER. [2]

(*a*) L.G.A., 1929, s. 6 ; 10 Halsbury's Statutes 886. But the term had been used in the report of the Royal Commission on the Poor Laws and Relief of Distress, 1905-1909.

(*b*) 10 Halsbury's Statutes 883.

(*c*) See 12 Halsbury's Statutes 968 *et seq.*

(*d*) L.G.A., 1929, s. 6 ; 10 Halsbury's Statutes 886.

(*e*) 12 Halsbury's Statutes 971.

(*f*) Public Assistance Order, Art. 144 ; 12 Halsbury's Statutes 1075.

While the council, as the public assistance authority, discharge their poor law functions generally as a separate entity the legislature has recognised that for certain purposes even larger areas are desirable. The original poor law unit was a parish. By the Poor Law Amendment Act, 1834 (*g*), the area was extended to the union, except in the case of the larger parishes. The effect of the L.G.A., 1929, was to create still larger units in administrative counties. Still wider areas have been created by the constitution of joint poor law committees (*h*).

Joint vagrancy committees have been constituted throughout the country, each including several counties and a number of county boroughs (*i*). The formation of such committees was recognised by the boards of guardians, but the system was voluntary and there were hardly any parts of the country in which the whole of the boards of guardians in the area were included in the particular combination.

By sect. 3 of the Poor Law Act (*k*), the Minister may combine areas and establish joint committees. Although the formation of such joint committees depends mainly on the voluntary co-operation of the councils included in any proposed combination the Minister has, in some instances, compelled other councils in the area to join the combination. Up to the present this power of combination has only been used for the purpose of the administration of vagrancy (*l*). [3]

The functions of each public assistance authority may be divided into (1) the granting of outdoor relief (*m*), which is relief in a person's own home, and is sometimes known as domiciliary relief; (2) institutional relief, which is relief afforded to a person by maintaining him in an institution; and (3) medical relief, which is relief afforded in sickness by medical attention in the patient's home and by the provision of necessary medicines or by admission to a suitable hospital or institution. The institutions administered by a public assistance authority include the general institution (formerly workhouse), casual wards, hospitals administered under the Poor Law Act, and children's homes. See the titles PUBLIC ASSISTANCE INSTITUTIONS and INSTITUTIONAL RELIEF. In connection with the administration of outdoor relief reference should be made to the title CASE PAPER SYSTEM.

From earliest times the principles of the law of settlement have been associated with the poor law system. The term "settlement" applies to the right or responsibility of an area to maintain its own poor. The Poor Relief Act, 1662, introduced the principle of settlement as at present known, the object being to ensure that each area should be responsible for its own poor. For some years after that date it was possible to remove a person even although he was not chargeable, but by the Poor Removal Act, 1795, a person was not to be removed until he became chargeable. The principles as to settlement and removal established by the Poor Law Amendment Act, 1834, are substantially still in operation, and are re-enacted in the Poor Law Act, 1930 (*n*). [4]

The public assistance authority may recover the cost of relieving a person either from the person himself or from certain relatives who

(*g*) 12 Halsbury's Statutes 922.

(*h*) See title JOINT POOR LAW COMMITTEES.

(*i*) See title JOINT VAGRANCY COMMITTEE.

(*k*) 12 Halsbury's Statutes 969.

(*l*) See titles CASUALS, VAGRANCY.

(*m*) See title OUTDOOR RELIEF.

(*n*) 12 Halsbury's Statutes 968; and see title SETTLEMENT AND REMOVAL.

are enumerated in sect. 14 of the Poor Law Act, 1930. This subject is considered in the title RECOVERY OF POOR RELIEF.

Reference should be made to the title POOR LAW OFFENCES for certain offences which are punishable under the Poor Law Act, 1930.

The subject of public assistance has always been closely associated with lunacy, due to the fact that the great majority of the persons who are detained in institutions owing to being of unsound mind, are chargeable to the public assistance authority. For further consideration of the law relating thereto, see title PERSONS OF UNSOUND MIND.

The granting of outdoor relief was associated formerly to a minor extent with unemployment insurance; it is now associated to a greater extent with unemployment assistance (o).

The general law relating to public assistance applies in London as elsewhere in England and Wales, but certain administrative provisions contained in Part V. of the Poor Law Act apply only to the County of London. This has therefore been considered separately in the title PUBLIC ASSISTANCE IN LONDON. [5]

(o) See titles MEANS TEST and UNEMPLOYMENT.

PUBLIC ASSISTANCE AUTHORITIES

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See also titles :

CASE PAPER SYSTEM ;
CASUALS ;
CHAPLAINS ;
GUARDIANS COMMITTEE ;
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PUBLIC ASSISTANCE OFFICER ;
RECOVERY OF POOR RELIEF ;
RELIEVING OFFICER ;
SETTLEMENT AND REMOVAL ;
UNEMPLOYMENT ;
VAGRANCY.

Introductory.—Boards of guardians were the poor law authorities until their abolition under the L.G.A., 1929. This Act followed the principle applied in 1834 when it was found that the parish was too small to bear the responsibility of the administration of the relief of the poor. The parish was then abolished as a poor law area and the union substituted. As it was deemed necessary still further to widen the area of charge, the functions of the guardians were transferred to the councils of counties and county boroughs by L.G.A., 1929. The law on this subject is contained mainly in the Poor Law Act, 1930, which is referred to in this title as the "Poor Law Act." [6]

Public Assistance Authorities.—The councils of counties and county boroughs are the public assistance authorities and are responsible for the administration of the poor law system. A member of such a council may not interfere in the administration, otherwise than as expressly provided, except at a meeting of the council or one of its committees or sub-committees (*a*). Power is given for councils to combine for special purposes (*b*). [7]

Relations with M. of H.—The Minister of Health is charged with the direction and control of all matters relating to the administration of public assistance (*c*). He exercises general supervision through inspectors appointed under the Poor Law Act, sect. 9, and also by ensuring compliance with the various orders issued in pursuance of sects. 136, 137 and 138. Provision is made for the publication of such orders and regulations and penalties are provided for disobedience thereof (*d*).

The former poor law authorities were very closely supervised by the Minister and his predecessors, the Local Government Board and the Poor Law Commissioners, to an extent hardly comparable with any other department of local government. Originally such control was necessary in order to preserve uniformity and to restrict unwise and unnecessary expense, the central authority having experience of the requirements in other areas. Since the transfer of functions to the councils of counties and county boroughs, the Minister has not exercised such rigid control in matters of detail as he is empowered to do under the Poor Law Act, although most of the provisions in the former Poor Law Orders in operation at the 31st March, 1930, are contained in the Public Assistance Order, 1930 (*e*). [8]

Policy in Relation to Analogous Public Health Functions.—A council in preparing their administrative scheme were required to have regard to the desirability of securing that, as soon as circumstances permitted, all assistance which could lawfully be provided otherwise than by way of poor relief should be so provided and accordingly any such scheme might declare that any assistance which could be provided either by way of poor relief or by virtue of certain other Acts should be provided exclusively by virtue of the appropriate Act and not by way of poor law relief (*f*). Among the enactments included were the

(a) Poor Law Act, 1930, s. 2 ; 12 Halsbury's Statutes 969.

(b) See titles JOINT POOR LAW COMMITTEES and JOINT VAGRANCY COMMITTEES.

(c) Poor Law Act, 1930, s. 1 ; 12 Halsbury's Statutes 968.

(d) *Ibid.*, ss. 137, 139 ; *ibid.*, 1036, 1037.

(e) 12 Halsbury's Statutes 1053—1090.

(f) L.G.A., 1929, s. 5 ; 10 Halsbury's Statutes 885.

P.H.A., 1875, the L.G.A., 1888, the Mental Deficiency Act, 1913, the Maternity and Child Welfare Act, 1918, the Blind Persons Act, 1920, the Education Act, 1921, and the P.H. (Tuberculosis) Act, 1921 (*i*).

Under the P.H.A., 1936, sect. 181 (*k*), a county council or a local authority may provide hospital accommodation for persons in their county or district who are sick, and this power includes power to provide clinics, dispensaries, out-patients' departments and, in some cases, maternity homes. Many former poor law institutions have been appropriated accordingly under the P.H.As. The approval of the Minister is required to such an appropriation. He has to consider whether the continued use of the institution for its present purpose will not be required to enable the council to perform their functions under the Poor Law Act, 1930, and whether it is required and suitable for the purpose for which the council propose to appropriate it (*l*).

If it is desired to divide an institution previously conducted as a single poor law institution, and to appropriate a definite part of it as a separate institution for the purposes of one of the special Acts, *e.g.* as a hospital under the P.H.A., it is necessary to satisfy the Minister that the division of the institution presents no difficulties from the administrative point of view or from the point of view of physical separation, and the exact limits of the lands and buildings to be appropriated must be defined and agreed (*m*).

It is the view of the Minister, though not interfering with the discretion of the council as public assistance authority, that every council should aim to treat under other Acts, without having recourse to their powers under the Poor Law Act, as many as possible of those for whom either provision is available by statute and should, with this object in mind, take into consideration the necessary expansion of their public health services (*n*). [9]

Delegation of Powers to Committees.—The public assistance committee must consider all matters relating to the exercise by the council of its public assistance functions (except rating and borrowing) and report before any action is taken by the council thereon unless the matter is urgent (*o*). The council may, if the administrative scheme so provides, delegate to the public assistance committee with or without such restrictions or conditions as they think fit, any of their poor law functions except the power of raising a rate or borrowing money. It is the practice of many councils to delegate wide powers to the public assistance committee while retaining full financial control and direction as to policy. Sub-committees of the public assistance committee may be appointed (*p*). [10]

Joint User of Institutions.—A public assistance authority may contract with the council of another county or county borough for the maintenance in an institution belonging to that council of children or adults, where suitable and adequate accommodation is not available

(*i*) 13 Halsbury's Statutes 623 *et seq*; 10 Halsbury's Statutes 686; 11 Halsbury's Statutes 160; 11 Halsbury's Statutes 742; 20 Halsbury's Statutes 593; 7 Halsbury's Statutes 180; 13 Halsbury's Statutes 971.

(*k*) 29 Halsbury's Statutes 447.

(*l*) M. of H. Memo., L.G.A., 26 November 15, 1929.

(*m*) *Ibid.*

(*n*) M. of H. Annual Report, 1929–1930. See also title HOSPITAL AUTHORITIES, Vol. VI., p. 18.

(*o*) Poor Law Act, 1930, ss. 4, 5; 12 Halsbury's Statutes 971.

(*p*) See title COMMITTEES as to general powers of delegation to committees under s. 85 of the L.G.A., 1933; 26 Halsbury's Statutes 352.

in an institution belonging to the authority to which the persons are chargeable. Such an agreement requires the approval of the Minister.

Under the operation of the L.G.A., 1929, two or more authorities sometimes have inmates in the same institution, owing to the fact that the former poor law union comprised a county borough and part of a county. [11]

Consultation with Voluntary Hospitals.—The council when making provision for hospital accommodation other than for persons suffering from infectious diseases, must consult an appropriate body representing the voluntary hospitals providing services in, or for the benefit of, the area, as to the accommodation to be provided and the purposes for which it is to be used (*g*). The first essential to this consultation is therefore the establishment of a representative body which can be consulted by the local authority when the occasion arises. The establishment of this representative body is a matter entirely for the voluntary hospitals in the area. Such bodies have, in fact, been generally appointed throughout the country. While the statutory requirement provides for consultation where provision for hospital accommodation is being made the Minister is of opinion that the best results are likely to be secured from a consultation which is initiated at an earlier stage and which provides local authorities and the representatives of voluntary hospitals with an adequate knowledge of each other's institutional resources and requirements before the plans for any new provision are considered. The problem to be examined includes not merely the adequacy of the accommodation for the sick but its adjustment to the needs of the area in such a way as to avoid unnecessary duplication (*r*). [12]

Relation to Unemployment Assistance Board.—A public assistance authority may not, except as regards medical needs, or in respect of burials, grant outdoor relief to any person to whom the Unemployment Assistance Act, 1934, applies or to any person whose needs have been taken into account in a determination for the time being in force under that Act (*s*). This prevents some of the overlapping between public assistance and unemployment assistance. (See title UNEMPLOYMENT.) It is not therefore possible for a public assistance authority to supplement assistance granted by the Unemployment Assistance Board, as it could previously supplement unemployment insurance benefit. This benefit also can no longer be supplemented by the public assistance authority, but any additional allowance must be made, if necessary, by the Unemployment Assistance Board. The prohibition does not apply to relief granted by relieving officers in a case of sudden necessity and certain other cases. (See title OUTDOOR RELIEF, Vol. X., p. 77.)

The Act makes special provision for co-operation between the Unemployment Assistance Board and the public assistance authority with regard to cases of special difficulty, such as where it is deemed advisable to grant an unemployment assistance allowance on condition that the applicant becomes an inmate of a public assistance institution (*t*). [13]

(*g*) P.H.A., 1936, s. 182 ; 29 Halsbury's Statutes 448.

(*r*) M. of H. Annual Report, 1930-1931.

(*s*) Unemployment Act, 1934, Sched. VIII. ; 27 Halsbury's Statutes 821.

(*t*) *Ibid.*, s. 40 ; *ibid.*, 791.

Appointment of Officers.—Poor Law officers were transferred from the board of guardians in each area to one of the county or county borough councils to which the poor law functions of that area were transferred by the L.G.A., 1929, but in order to confer on any such officer the rights of a transferred officer, in relation to compensation or superannuation, that person must have been an officer of a poor law authority on November 12, 1928, and on April 1, 1930 (*u*).

The appointment of poor law officers is controlled by the Minister who may direct any council to appoint such officers, with such qualifications as he thinks necessary, for superintending or assisting in the administration of relief of the poor, or for carrying out any of their poor law functions. The Minister has also power to regulate the salaries of such officers and to define their duties. He may direct the mode of appointment and determine the continuance in office or dismissal of such officers and the amount and nature of the security to be given by such of them as the Minister thinks should give security and he may, if he thinks fit, regulate the amount of their salaries and a time and mode of payment thereof (*a*). [14]

If any council fail to appoint officers as required by the Minister, he may appoint such officers and determine the salary or remuneration to be paid by the council (*b*). It appears to have been many years since the Minister has exercised this power in relation to a poor law authority, and no instance is known of his having done so in relation to a public assistance authority since the transfer of the poor law functions from the boards of guardians under the Act of 1929. Although the Minister has power of appointment under this section it is no answer to an application for *mandamus* to compel an authority to appoint an officer (when such an appointment is made obligatory by statute, as in the case of a vaccination officer under the Vaccination Act, 1871), for the authority to allege that the proper course is for the Minister to appoint such officer himself (*c*).

The Minister has exercised his general power to regulate the appointment of officers by issuing the Public Assistance Order, 1930. The council must appoint a public assistance officer, who may be the clerk to the council. The council may appoint more than one public assistance officer and so many assistant, or deputy public assistance officers as the council may think fit (*d*) (see title PUBLIC ASSISTANCE OFFICER). The council must appoint a district medical officer for every medical relief district (see titles POOR LAW MEDICAL OFFICER and RELIEVING OFFICER). The council may appoint a superintendent relieving officer or a general relieving officer for the whole or any part of the area. [15]

The council must appoint for every institution a master, matron, medical officer and chaplain, and, if the institution contains not less than 100 beds for sick inmates, a superintendent nurse; at every hospital, a medical superintendent, matron, steward and chaplain; at every children's home, a superintendent or matron, medical officer and chaplain, and (when requisite) a schoolmaster and schoolmistress. The appointment of schoolmaster and schoolmistress is not required, when, as is usually the case, the children from the children's homes attend schools provided by the local education authority. The council

(*u*) L.G.A., 1929, s. 119; 10 Halsbury's Statutes 960.

(*a*) Poor Law Act, 1930, s. 10; 12 Halsbury's Statutes 974.

(*b*) *Ibid.*, s. 11.

(*c*) *R. v. Leicester Union*, [1899] 2 Q. B. 682; 38 Digest 202, 382.

(*d*) Public Assistance Order, 1930, Art. 141; 12 Halsbury's Statutes 1075.

must appoint for every casual ward a superintendent, medical officer, chaplain and (when necessary) a matron (see title CASUALS, Vol. II., p. 440).

If an institution does not include adult male persons it is not necessary to appoint both a master and a matron. Some councils have thought it desirable to use the term superintendent instead of the term master, but the term master must be used for all legal purposes, such as under the Lunacy Acts (Public Assistance Order, 1930, Art. 143).

A person holding one of the foregoing appointments is termed a senior poor law officer, except in the case of an officer in charge of a children's home having not more than thirty children (Art. 144).

[16]

At each institution at which there are three or more nurses employed, the council must, if there is no superintendent nurse, appoint a person to be head nurse (Art. 145). At each institution the council must, if the staff does not include a trained nurse, either appoint such an officer or make arrangements whereby skilled nursing attendants may be available (Art. 146). A trained nurse is defined by Art. 6 as a person whose name is entered on the general part of the register kept by the General Nursing Council for England and Wales and includes any person who before April 1, 1930, had successfully passed through a course of general training during not less than three years in a training school for nurses recognised by the Minister. In the present circumstances it would be very unusual for any council to have under its control an institution for the sick where there was not a whole-time nursing staff. The council may employ probationer nurses at institutions or hospitals which are approved for that purpose by the Minister (Art. 147). The approval of the General Nursing Council for England and Wales is required before any establishment can be recognised as a training school. Where such a training school is approved the council must provide proper facilities for the training of the probationer nurses (Art. 147). **[17]**

Apart from those officers whom the council is under an obligation to appoint, the council have a general power to appoint such other officers as they may think necessary (Art. 149). This is the authority whereby the vast majority of poor law officers are appointed.

A chaplain for the purpose of the Poor Law Orders is a clergyman of the Church of England, but the council may appoint religious instructors who are Roman Catholics or Nonconformists.

The council may also appoint or employ suitable persons as assistant officers, or temporary substitutes for officers and such servants as they think fit (Art. 150).

Except as provided by the order, a council may appoint or employ any officer or servant on such terms and conditions of service as they think appropriate, may suspend or remove him from office, and may pay him reasonable remuneration and also such reasonable compensation on account of any extraordinary services, or unforeseen circumstances connected with his duties as they think fit (Art. 151).

No person may be appointed to be an officer who is, or, at any time during the twelve months preceding his appointment, has been, a member of the council (Art. 152). **[18]**

The council must from time to time fix at such amount as they consider reasonable the annual value of any accommodation, rations or other necessities assigned to any officer as part of his emoluments (Art. 153). This provision, however, does not affect the exercise by

the Minister of his power under sect. 18 of the Poor Law Officers' Superannuation Act, 1896 (e), to determine questions as to the right to, or the amount of, the officer's superannuation allowance.

The council may make reasonable arrangements, on such conditions as seem to them proper, for the residence in an institution of members of the family of a resident officer (Art. 154).

It is not now customary for the Minister to exercise his power to fix the amount of security to be given by any officer, but every officer who is responsible for the receipt or custody or issue of goods or money must, if required by the council, give such security as seems to the council sufficient (Art. 155). It is the practice of many councils to enter into a comprehensive insurance policy covering the fidelity of the whole of their officers. (See title **GUARANTEE OF OFFICERS**). [19]

The council may declare, at the time of appointment, that the appointment of two officers, whether they be husband and wife, or not, to cognate offices, shall be treated as a joint appointment, and in any such case the termination of the office of either of them renders the office of the other vacant at the expiration of the then current quarter. The appointments of a master and matron of an institution and superintendent and matron of a children's home must be joint appointments (Art. 156). This apparently applies even although they may not be husband and wife.

A senior poor law officer holds office until he dies, or resigns, or retires on superannuation, or is dismissed by the council subject to the consent of the Minister, or is removed by the Minister, or is proved to be insane, by evidence which the Minister deems to be sufficient, or until the Minister considers it desirable that his duties should cease or should be modified. In such a case his continuance in office terminates at the expiration of three months' notice. The council may, however, with the consent of the Minister, terminate the appointment of any such officer at any time before or at the expiration of the first year of his service by giving him three months' notice in writing (Art. 157).

If any poor law officer is suspended from the performance of his duties, the fact of such suspension, with a statement of the reasons therefor, must be reported forthwith to the Minister, and if the Minister removes the suspension the officer must forthwith resume the performance of his duties. Any officer who, having been suspended, resigns or is removed from office during the period of his suspension will not be entitled to any salary from the date of the suspension (Art. 158).

[20]

Special qualifications are required of persons appointed as public assistance officer, assistant or deputy public assistance officer, relieving officer, master, superintendent, or steward (Art. 159). (See also titles **PUBLIC ASSISTANCE OFFICER**, **RELIEVING OFFICER**, **MEDICAL SUPERINTENDENT**, **INSTITUTIONAL RELIEF**.)

The duties of certain officers are specified in the Public Assistance Order, 1930, but every officer, assistant officer or servant has certain general duties prescribed by Art. 164. He must observe all orders of the Minister and all lawful regulations or directions of the council or any superior officer affecting his office; account for monies; make written reports when required; attend meetings when directed so to do; produce documents when required; supply to the clerk any information required by the Minister or the council, and, except so far as provision

is made by or with the approval of the council for assistance in his office, personally discharge the duties of his office and, where assistance is so provided, be personally responsible for the proper discharge of those duties.

The chief financial officer of the council must advise the council on financial questions arising in connection with the discharge by the council of their poor law functions (Art. 165). [21]

Poor Law Statistics.—Following the procedure when the poor law was administered by boards of guardians, the Minister requires various forms of statistics periodically. The council must make to the Minister such reports and returns and give him such information with respect to their functions as he may require (*f*).

Apart from any statistics required for purely local information the form and content of the poor law statistics to be kept with a view to furnishing such reports and returns have been prescribed by the Minister as follows :

- (1) Weekly Return Form B., shewing the number of persons in receipt of relief on each Saturday, classified under institutional relief, domiciliary relief, and casuals.
- (2) Monthly Return in Form 298—134 (*g*).
- (3) Annual Return in Form H. 4, shewing the number of persons in receipt of poor relief on the night of January 1.
- (4) Annual Costing Return for the financial year. [22]

Accounts.—Under the former poor law system the form of accounts to be kept by the boards of guardians was prescribed in minute detail. The number of prescribed forms has, however, been much reduced, and there are only a few prescribed by the Public Assistance Order, 1930, and the Relief Regulation Order, 1930. Pending full consideration being given to this matter by the various councils in the light of experience, the Minister suggested the desirability of continuing many of the forms of accounts for institution officers, relieving officers and collectors which were formerly compulsory (*h*).

The public assistance committee must frame its annual estimates in the same manner as other departments of the council. Certain loan and capital accounts are prescribed by Art. 14 of the Accounts (Boroughs and Metropolitan Boroughs) Regulations, 1930, and Art. 12 of the Public Assistance Accounts (County Councils) Regulations, 1930. The revenue account of county councils must shew the income without any deduction of expenditure connected therewith, and the expenditure without any deduction of income connected therewith; but where correction or rebatement of charge has occurred, the income or expenditure concerned must be shewn at its reduced amount, and credits in respect of old materials sold or placed in stock awaiting disposal at a future date may be shewn as deductions from the expenditure out of which they arise (*i*).

The regulations affecting county borough councils also require a separate public assistance balance sheet, divided into capital and revenue sections, and shewing the assets and liabilities and the financial position of each of the funds or revenues at the end of the year (*j*),

(*f*) L.G.A., 1929, s. 51; 10 Halsbury's Statutes 920.

(*g*) M. of H. Circular 1603, March 15, 1937.

(*h*) M. of H. Memoranda 148 A/cs. County. 150, A/cs. County Boroughs.

(*i*) Public Assistance Accounts (County Councils) Regulations, 1930, Art. 7.

(*j*) Poor Law Act, 1930, s. 119; 12 Halsbury's Statutes 1031.

but a county council is not required to compile such a separate balance sheet in respect of public assistance expenditure. [23]

Contracts.—Any contract entered into by or on behalf of any county or county borough council as the public assistance authority which is not made and entered into in conformity with the regulations made by the Minister, is voidable, and if the Minister so declares shall be void. All payments made in pursuance of any contract after the Minister has declared the contract to be void must be disallowed in the accounts of the council or officer by whom the payments have been made. (See also title **CONTRACTS**, Vol. IV., p. 12.)

Any contract proposed to be entered into in relation to their public assistance functions must be in accordance with the standing orders of the council (*k*).

Any county or county borough council may borrow for the purpose of discharging their poor law functions (*l*). [24]

Audit.—The public assistance accounts of the county council are subject to district audit as in the case of the other accounts of the council.

In the case of county boroughs this is provided for by sect. 119 of the Poor Law Act (*m*), which requires separate accounts to be kept of the receipts and expenditure in respect of their poor law functions, and those accounts are to be made up and audited in like manner and subject to the same provisions as the accounts of a county council. (See also titles **AUDIT**, **SURCHARGE**, **FINANCE DEPARTMENT**, **ACCOUNTS OF LOCAL AUTHORITIES**.) [25]

Capital Expenditure.—The council may incur capital expenditure in connection with the enlargement, alteration and improvement of any poor law establishment without applying for the specific consent of the Minister thereto, provided that the works in any particular instance do not involve expenditure exceeding £1,000 or a loan (*n*). [26]

Exemption from Stamp Duty.—Stamp duty is not chargeable on any mortgage, bond, instrument or any assignment thereof given by way of security in pursuance of any rules, orders or regulations made by the Minister, nor on any contract or agreement made or entered into in pursuance of such rules, orders or regulations (*o*). The exemption from stamp duty in force under the former poor law administration in respect of orders, cheques and receipts which followed the forms prescribed by the Minister for the guardians, has been discontinued. The Minister has prescribed no such forms for the councils as he was of opinion that the exemption could not be justified under the altered circumstances and would be very inconvenient in practice (*p*). [27]

When Exempted from Income Tax.—Public assistance authorities are exempted from income tax in respect (*inter alia*) of their hospitals and general poor law institutions (*q*). [28]

(*k*) Public Assistance Order, 1930, Art. 15 ; 12 Halsbury's Statutes 1056.
 (*l*) Poor Law Act, 1930, s. 118 ; *ibid.*, 1030. See title **BORROWING**, Vol. II., p. 199.
 (*m*) 12 Halsbury's Statutes 1031.
 (*n*) Public Assistance Order, 1930, Art. 14 ; 12 Halsbury's Statutes 1056.
 (*o*) Poor Law Act, 1930, s. 162 ; *ibid.*, 1047.
 (*p*) M. of H. Circulars, Nos. 1075 and 1076, January 29, 1930.
 (*q*) Income Tax Act, 1918, ss. 37—40 ; 9 Halsbury's Statutes 443—447. See also title **INCOME TAX**.

Miscellaneous Forms of Expenditure.—Specific power is given to a public assistance authority to incur expenditure of a miscellaneous character.

Under the powers conferred by sect. 113 of the Poor Law Act (*r*), the Minister has authorised the payment of reasonable expenses in conveying any person who is receiving relief from the council, to and from any institution, hospital or other public or voluntary establishment, for the purpose of visiting a husband, wife, child or other near relative, who is an inmate thereof (*s*). The council or public assistance committee should make regulations in regard to the payment of such expenses incurred by giving authority to some appropriate officer to take action thereon between meetings of the council or committee.

Under the powers conferred by sect. 114 (repealed, except as to London, by L.G.A., 1933, and replaced by sect. 267 of that Act) the Minister has given authority for the council to pay the reasonable expenses incurred by not more than three members of the council or by the clerk in attending central or district conferences of poor law authorities, either held in London or convened for an area including the area of the council, for the purposes of discussing poor law questions; and also the reasonable expenses incurred in purchasing reports of the proceedings. The travelling expenses of members of a guardians committee or of a sub-committee of such a committee appointed for the discharge of functions throughout the whole area of the committee may be paid in going to or from meetings of the committee or sub-committee or for the purpose of necessary inspections (*ss*). [29]

The council may pay the reasonable expenses incurred in the preparation and collection of information required of or by them in respect of their poor law functions (*t*).

The council may pay or reimburse any of their officers concerned with the administration of public assistance any expenses necessarily incurred in repairing or restoring property belonging to the officer which may have been maliciously damaged or destroyed by any person applying or having applied for relief and any costs and expenditure incurred in the prosecution of the offender not allowed by the court (*u*).

The council may pay the reasonable costs of the apprehension and prosecution of persons charged with certain specified offences and of poor law officers charged with neglect or breach of duty or maltreatment or abuse of any person (*a*). Subject to the approval of the Minister, the council must pay the costs (not recovered from any other source) of legal proceedings authorised by them (*a*). [30]

(*r*) 12 Halsbury's Statutes 1029.

(*s*) Public Assistance Order, 1930, Art. 17; 12 Halsbury's Statutes 1056.

(*ss*) L. G. (Members' Travelling Expenses) Act, 1937, s. 1 (2); 30 Halsbury's Statutes 384; and *Glamorgan County Council v. Ayton*, [1936] 3 All E. R. 210; 100 J. P. 483; Digest Supp.

(*t*) Poor Law Act, 1930, s. 115; *ibid.*, 1030.

(*u*) *Ibid.*, s. 116.

(*a*) *Ibid.*, s. 157.

PUBLIC ASSISTANCE COMMITTEE

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See also titles :

CASE PAPER SYSTEM ;
CASUALS ;
CHAPLAINS ;
GUARDIANS COMMITTEE ;
INSTITUTIONAL RELIEF ;
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OUTDOOR RELIEF ;
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POOR LAW MEDICAL OFFICERS ;
POOR LAW OFFENCES ;

PUBLIC ASSISTANCE ;
PUBLIC ASSISTANCE AUTHORITIES ;
PUBLIC ASSISTANCE IN LONDON ;
PUBLIC ASSISTANCE INSTITUTION ;
PUBLIC ASSISTANCE INSTITUTION MASTER ;
PUBLIC ASSISTANCE OFFICER ;
RECOVERY OF POOR RELIEF ;
RELIEVING OFFICER ;
SETTLEMENT AND REMOVAL ;
UNEMPLOYMENT ;
VAGRANCY.

Preliminary.—Public assistance committees were established under sect. 6 of the L.G.A., 1929 (a), on the transfer of the functions of the boards of guardians to the councils of counties and county boroughs, as from April 1, 1930. Each council was required to formulate an administrative scheme as to the arrangements to be made for the discharge of its poor law functions. These schemes required the approval of the Minister of Health. [31]

Constitution of Public Assistance Committees.—Sect. 4 of the Poor Law Act, 1930, permits a scheme to provide either for a separate public assistance committee or for another committee of the council to act as such, in either case with or without co-opted members ; but two-thirds of the members must be members of the council.

It has been the general policy of the Minister to accept the opinion of the individual council concerned as to whether the committee should include amongst its members persons who are not members of the council.

The Minister has also taken the view that each local authority can best decide the form of committee most suited to local conditions (b),

(a) 10 Halsbury's Statutes 886 ; now repealed and re-enacted under the Poor Law Act, 1930, s. 4 ; 12 Halsbury's Statutes 971.

(b) 12th Annual Report of the M. of H., 1930-1931.

but the opinion has been expressed that it may prove necessary to guard against one of two risks : (a) of a special committee becoming a self-contained and unco-ordinated unit, and (b) of a public assistance committee of membership common to an existing committee becoming overloaded and unable to cope with the volume of work. [32]

The following statement shews the type of committee appointed by councils throughout the country generally :

(1) CONSTITUTION OF PUBLIC ASSISTANCE COMMITTEES.

(a) WITH ADDED MEMBERS

Special Committee.			Public Health Committee (c).
(i.) <i>County Councils</i> (39)			(i.) <i>County Councils</i> (3)
Buckingham	Lancashire	Salop	Ely, Isle of
Cambridge	Leicester	Scilly, Isles of	Lincoln : Parts of
Cheshire	Lincoln : Parts of	Somerset	Holland
Cornwall	Kesteven	Surrey	Peterborough, Soke of
Cumberland	Lincoln : Parts of	Sussex, West	
Derby	Lindsey	Westmorland	
Devon	London	Wight, Isle of	
Dorset	Northampton	Wilts	
Durham	Northumberland	Worcester	
Essex	Nottingham	Yorks (North Riding)	
Gloucester	Oxford	Yorks (West Riding)	
Hertford	Rutland		
Anglesey	Cardigan	Flint	
Brecon	Carmarthen	Radnor	
(ii.) <i>County Borough Councils</i> (50)			(ii.) <i>County Borough Councils</i> (2)
Bath	Doncaster	Oxford	Blackburn (d)
Birkenhead	Dudley	Portsmouth	Kingston-upon-Hull
Birmingham	Exeter	Preston	
Blackpool	Gateshead	Rochdale	
Bootle	Gloucester	St. Helens	
Bournemouth	Great Yarmouth	Southampton	
Brighton	Grimsby	Southend-on-Sea	
Bristol	Ipswich	Southport	
Burnley	Leeds	South Shields	
Burton-on-Trent	Leicester	Stoke-on-Trent	
Carlisle	Liverpool	Sunderland	
Chester	Newcastle-upon-Tyne	Tynemouth	
Coventry	Northampton	Wallasey	
Croydon	Nottingham	West Hartlepool	
Derby	Oldham	Wolverhampton	
Dewsbury		Worcester	
Cardiff		York	
Newport (Mon.)			

[33]

(c) Includes Committees styled "Public Health and Housing," "Public Health, Housing and General Purposes."

(d) Scheme empowers co-option to ensure three women on Public Assistance Committee.

(b) WITHOUT CO-OPTION

Whole Council.	Special Committee.	Public Health Committee (e).	Other Committees.
(i.) <i>County Councils</i> (2)	(i.) <i>County Councils</i> (9) Kent Southampton Stafford Sussex, East Warwick	(i.) <i>County Councils</i> (10) Bedford Berks Hereford Huntingdon Middlesex Norfolk Suffolk, East Suffolk, West Yorks (East Riding)	(i.) <i>County Councils</i>
Glamorgan (f) Monmouth	Caernarvon Merioneth Montgomery Pembroke	Denbigh	
(ii.) <i>County Borough Councils</i> (4) Lincoln Warrington West Bromwich	(ii.) <i>County Borough Councils</i> (23) Barnsley Barrow-in-Furness Bolton Bradford Bury Canterbury Eastbourne East Ham Halifax Manchester Norwich Plymouth Reading Rotherham Salford Sheffield Smethwick Stockport Wakefield Walsall West Ham Wigan	(ii.) <i>County Borough Councils</i> (1) Huddersfield	(ii.) <i>County Borough Councils</i> (3) Darlington (General Purposes) Hastings (Finance) Middlesbrough (General Purposes and Parliamentary)
Merthyr Tydfil	Swansea		[34]

The number of members of the committee is in the discretion of the council, subject to the Minister approving the proposal in relation thereto in the administrative scheme. The term of office of the members, date of election, procedure as to resignation of members and the filling of casual vacancies should be dealt with in the administrative scheme. [35]

Functions of the Public Assistance Committee.—All matters relating to the exercise by the council of their poor law functions, except the

(e) Includes Committees styled "Public Health and Housing," "Public Health, Housing and General Purposes."

(f) Scheme also allows co-option of council members if Public Health Committee numbers less than twenty-four.

power of raising a rate, or borrowing money, must stand referred to the public assistance committee; and the council before exercising any such functions must, unless in their opinion the matter is urgent, receive and consider the report of the public assistance committee thereon (g).

If authorised by the administrative scheme, the council may delegate to the public assistance committee, with or without such restrictions or conditions as they think fit, any of their functions under the Act, except the power of raising a rate or borrowing money. With some exceptions, it has been the general practice of the various councils to delegate to the public assistance committee the larger part of the transferred functions, the most frequent exceptions (apart from those imposed by the Statute) being (a) alteration or revocation of the scheme, (b) application to the Minister for an order under sect. 3 of the Poor Law Act, 1930 (h), for the combination of areas of councils for the purpose of any of its transferred functions, (c) acquisition or disposal of land or buildings, (d) appointment or dismissal of officers, creation of new offices, revision of salary scales, and (e) making of contracts over a specified figure. It is, however, competent for any council (after the amendment of its administrative scheme, if necessary), to grant full delegation of these functions to the public assistance committee. [36]

Experience has shewn that a certain amount of delegation is essential in a complex service like the poor law, where emergencies frequently arise. In some areas, the public assistance committee has been authorised to make regulations as to the general or special restrictions or conditions to be imposed upon the guardians committees or sub-committees in the discharge of their functions (i).

It is a function of public assistance committees in counties to receive reports from the guardians committees and take such action thereon as may be necessary. The committee has various duties in regard to the poor law institutions in its area, such as defining the classes of persons requiring relief in institutions for whom the several institutions belonging to the council may be suitable, and arranging for the visitation and management of the poor law institutions in its area. (j) [37]

The arrangements for the payment of relief by guardians committees and the supply of relief in kind by guardians committees, may also require the consideration of the public assistance committee where it is desired to deal with this matter as one of policy for the whole county. In most areas the public assistance committee has been charged with the duty of keeping a register or index of all persons who have received assistance from any committee or sub-committee of the council. They deal with the relief of the casual poor and the due observance of the regulations in regard thereto, and other matters which are normally delegated to them are arrangements for (1) vesting in the council of the rights and powers of parents in respect of children to be assumed by the council under sect. 52 of the Poor Law Act, 1930 (k), (2) boarding-out of children, (3) apprenticing and placing

(g) Poor Law Act, 1930, s. 4 (2); 12 Halsbury's Statutes 971.

(h) 12 Halsbury's Statutes 969.

(i) See Poor Law Act, 1930, s. 5; 12 Halsbury's Statutes 971.

(j) See Public Assistance Order, 1930, Art. 11; 12 Halsbury's Statutes 1055.

(k) 12 Halsbury's Statutes 994.

out of children of suitable age, (4) emigration of suitable persons, (5) setting to work able-bodied persons who are granted relief.

The periodicity of the reports to be submitted by the public assistance committee to the council should be stated in the scheme.

On the transfer of functions on April 1, 1930, three county councils and eight county borough councils did not expressly authorise any delegation in the administrative scheme. [38]

Meetings and Procedure of the Public Assistance Committee.—The public assistance committee must meet at such intervals as may be determined by the council in the administrative scheme, or at such more frequent intervals as the committee may find to be necessary. It is the normal practice for the standing orders of the council regulating the meetings and procedure of committees to apply to meetings and proceedings of the public assistance committee.

An inspector appointed by the M. of H. is entitled to attend any meeting of a public assistance committee but not to vote (*l*). [39]

General.—The arrangements above set out do not remove the assistance from the category of poor law relief or their administrators from the responsibility of carrying out the law and regulations relating to the poor. [40]

Discharge of Functions by other Committees.—Any of the functions of the public assistance committee may, if the scheme so provides, be discharged on behalf of, and subject to the general direction of, that committee, by any of the other committees of the council (*m*). This policy has not been adopted generally throughout the country, but the following are illustrations of matters which have in some areas been dealt with accordingly :

(a) *By the Public Health Committee.*

- (1) The visiting, inspection and management of particular institutions ; the maintenance therein of the sick, aged, infirm, and children under two years of age, and
- (2) the relief of persons having a fixed place of abode outside the county or county borough but requiring hospital treatment by reason of accident or sudden sickness.

(b) *By the Education Committee.*

- (1) The visiting, inspection and management of children's homes, and the maintenance therein of poor children.
- (2) The boarding-out of children in suitable cases.
- (3) The apprenticing and placing out of children of suitable age.

Where the scheme provides for the discharge of certain of the functions of the public assistance committee by other committees it is usual to provide that any proposals of the public assistance committee for directing or controlling the discharge of functions by those other committees shall be first submitted to the council for approval. [41]

Sub-Committees of Public Assistance Committee.—The appointment of sub-committees by the public assistance committee is a matter which may be dealt with under the administrative scheme or under the general power of the committee to appoint sub-committees. If so

(*l*) Poor Law Act, 1930, s. 9 ; 12 Halsbury's Statutes 974. For further powers of inspectors to attend meetings, see *ibid.*, s. 4 (2).

(*m*) *Ibid.*, s. 4 (4).

provided by the scheme, the public assistance committee may appoint sub-committees consisting wholly or partly of members of the committee, for the discharge with or without such restrictions or conditions as they think fit, of any functions of the committee which may be deemed to be more efficiently discharged through a sub-committee. In county boroughs it is usual for express power to be obtained in the administrative scheme for the appointment of local sub-committees for the purpose of granting outdoor relief, with or without restrictions as to the persons who should be appointed on such sub-committees. [42]

Finance.—The delegation of functions to the public assistance committee is usually subject to any standing orders or general instructions to committees of the council not being inconsistent with the provisions of the Poor Law Act or the administrative scheme. The committee must act in compliance with such instructions as may be given by the council with regard to the furnishing of estimates and accounts of receipts and expenditure, and the payment of monies out of the general fund. [43]

Relation to Guardians Committees.—The general supervision of the work of the various guardians committees in a county is one of the functions of a public assistance committee. In some counties the appointment of members of guardians committees has been delegated by the county council to the public assistance committee. The guardians committee must comply with any general or specific instruction of the public assistance committee subject to the powers specifically conferred on guardians committees, under the provisions of the administrative scheme (n).

In particular, where authorised by the county council, either specially or in the administrative scheme, the public assistance committee may make regulations with regard to the consideration and examination of applications for relief; the determination of the amount and nature of relief to be granted; the determination of the amount, if any, to be paid by a recipient of relief, or by the person liable for his maintenance, towards reimbursement to the council of the amount expended; and the visitation, inspection and management of any poor law institution.

The scheme must provide a method of consultation between the public assistance committee and the guardians committees of any area upon business relating specially to that area. Every guardians committee has, in accordance with the provisions of the scheme, power to nominate their chairman or other representative to be present at any meeting of the public assistance committee at which business especially relating to the area of the guardians committees is to be transacted. Any person so nominated is entitled to take part in the proceedings of any such meeting, in so far as they relate specially to the area of the guardians committee by whom he is nominated, but not to vote (o). [44]

The administrative scheme usually provides for the period of notice to be given by the public assistance committee to a guardians committee of the date and time of any meeting whereat business which, in the opinion of the public assistance committee, relates specially to the area of that guardians committee, is to be transacted, and the nature of that business. If a nominated representative is unable to be present

(n) Poor Law Act, 1930, s. 5; 12 Halsbury's Statutes 971.

(o) *Ibid.*, s. 5 (5).

on the appointed day, it is usual for a deputy nominated by the guardians committee to be allowed to attend in his place.

Public assistance committees are usually empowered to authorise the guardians committee to appoint sub-committees, and to give directions as to the quorum, proceedings and place of meeting of any such sub-committee. [45]

PUBLIC ASSISTANCE IN LONDON

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INTRODUCTORY

The administration of relief in the County of London is, in the main, governed by the same general statutory provisions as those which apply to the rest of England and Wales. Certain exceptions should, however, be mentioned. Part V. of the Poor Law Act, 1930 (a), contains a number of provisions applicable only to London. The most important of these is sect. 122 (relating to committees and sub-committees) which, for London, takes the place of the general provisions of sects. 4 (2) to (4) and 5. Sect. 122 is discussed in more detail below (p. 20). The Public Assistance Order, 1930 (b), has been modified in its application to the L.C.C. by (i.) an instrument dated July 2, 1930

(a) Ss. 121—135; 12 Halsbury's Statutes 1032—1035.

(b) 12 Halsbury's Statutes 1053.

(see p. 23, *post*), and (ii.) the L.C.C. (Adjudicating and Assessment Officers) Order, 1935 (see p. 23, *post*), which makes certain consequential modifications in the application to the L.C.C. of the Relief Regulation Order, 1930 (c). The Public Assistance (Casual Poor) Order, 1931 (d), has been slightly modified in its application to the L.C.C. by an instrument dated July 11, 1931, made by the Minister of Health under Art. 8 of the Public Assistance Order, 1930 (e). [46]

THE LONDON COUNTY COUNCIL'S ARRANGEMENTS FOR THE ADMINISTRATION OF RELIEF

Before the passing of the L.G.A., 1929, the poor law was administered in London by twenty-five separate boards of guardians. The Metropolitan Asylums Board, however, exercised poor law functions in connection with the provision of special hospitals for infectious diseases, tuberculosis and children, hospitals for harmless mental patients and epileptics, casual wards and a training ship for boys. By the L.G.A., 1929, the poor law functions of these authorities were transferred to the L.C.C. who thus became the public assistance authority for the whole of the County of London.

Under powers given in sect. 12 of the L.G.A., 1929 (f), which repealed the Unemployed Workmen Act, 1905 (g), the Minister of Health made the Unemployed Workmen Organisation (London) (Revocation) Order, 1930, which provided for the abolition of the Central (Unemployed) Body for London and for the transfer to the L.C.C. of all property vested in the Central Body. The principal asset thus transferred was the Hollesley Bay Farm Colony. This colony is now administered by the public assistance committee of the council as a residential training centre (see p. 25). [47]

The Council's Administrative Scheme.—By sect. 122 of the Poor Law Act, 1930 (g), the council is enabled to refer or delegate to any of its committees, including the public assistance committee, any of the poor law functions transferred to it (except the power of raising a rate or borrowing money). The administration of the poor law in London is governed by an administrative scheme made in December, 1934, which came into operation on July 1, 1935. The scheme provides for the constitution of a public assistance committee who are charged with the duties of exercising, and advising the council as to the exercise of the transferred poor law functions so far as such functions are not referred to other committees. [48]

Among other duties the public assistance committee advise on all questions of policy relating or incidental to the administration of relief, prepare estimates of, and exercise control over, expenditure on capital and maintenance account, arrange for the care and maintenance of all persons (excluding children under the age of three years who are separated from their parents) requiring relief in institutions or in homes of voluntary organisations, the care of homeless poor, the ordering of domiciliary medical relief and (jointly with the hospitals and medical services committee) for the formation of medical relief districts and the location of medical relief stations and dispensaries.

(c) 12 Halsbury's Statutes 1090.

(e) 12 Halsbury's Statutes 1055.

(g) 12 Halsbury's Statutes 1032.

(d) 24 Halsbury's Statutes 319.

(f) 10 Halsbury's Statutes 891.

They also arrange for the payment of relief in money and for the supply of relief in kind, and for setting to work, training and instructing able-bodied persons who are granted outdoor relief. They keep all necessary co-ordinative records in regard to persons who have received assistance through any committee or sub-committee of the council, decide the cases in which the council shall exercise the rights and powers of parents under sect. 52 of the Poor Law Act, 1930 (*h*), and arrange for the emigration of suitable persons (other than children unaccompanied by their parents or by other adult relatives). [49]

The following other committees of the L.C.C. are respectively charged under the scheme with duties relating to the poor law functions specified :

Hospitals and Medical Services Committee.—The provision, classification, maintenance and management of hospitals, and matters incidental thereto ; dealing with cases requiring hospital (including convalescent) treatment ; the provision of domiciliary medical relief for persons for whom such relief has been ordered ; and the institutional care of children under the age of three years who are separated from their parents.

Mental Hospitals Committee.—The provision, classification, maintenance, management of mental hospitals ; and the care of harmless insane persons of the chronic or imbecile class, mental defectives, the feeble-minded and other persons, who, owing to mental infirmity or defect, require institutional care and treatment.

Education Committee.—The education, care and maintenance of children over the age of three years in schools, and the education of children in hospitals at which education is provided ; the provision, classification, maintenance and management of schools (including any training ship) ; the boarding-out of children ; the exercise on behalf of the council, in cases to be decided by the Public Assistance Committee, of the rights and powers of parents under sect. 52 of the Poor Law Act, 1930 (*i*), in respect of children ; the placing of children in employment by apprenticeship or otherwise ; and the emigration of children unaccompanied by their parents or by other adult relatives.

Committee on the Welfare of the Blind.—The promotion of the welfare of blind persons, and the grant of domiciliary relief to the sighted dependants of blind persons. [50]

Grant of Assistance otherwise than by way of Poor Relief.—In pursuance of sect. 5 of the L.G.A., 1929 (*k*), the L.C.C. has declared in its administrative scheme : (i.) that all domiciliary assistance to blind persons shall be provided exclusively by virtue of the Blind Persons Act, 1920, and (ii.) that it is the intention of the council that, as soon as circumstances permit, all other assistance which can be provided either by way of relief or by virtue of any of the following Acts, as amended by any subsequent enactment (that is to say) : the L.G.A., 1888 ; the Mental Deficiency Act, 1913 ; the Blind Persons Act, 1920 ; the P.H. (Tuberculosis) Act, 1921 ; and the Education Act, 1921, shall be provided exclusively by virtue of one or other of the said Acts and not by way of relief.

Under the L.C.C. (General Powers) Act, 1915, the council has appropriated for the purpose of the reception of the sick under powers given in sect. 14 of the L.G.A., 1929 (*l*), and its applied enactments, the general and special hospitals transferred from the former metropolitan poor law authorities. These arrangements are described more

(*h*) 12 Halsbury's Statutes 994.
(*k*) 10 Halsbury's Statutes 885.

(*i*) *Ibid.*
(*l*) *Ibid.*, 891.

fully in the title HOSPITAL SERVICES (LONDON), Vol. VII., p. 30. [51]

Committee and Sub-committee Organisation.—The public assistance committee consists of the chairman, vice-chairman and deputy-chairman of the council *ex-officio*, twenty-nine other members of the council, and sixteen persons who are not members of the council. The chief officer of public assistance, who is the executive officer concerned with the exercise of the committee's functions, is also clerk to the committee. To facilitate the work of the committee, four central sub-committees of the committee have been appointed: the general purposes sub-committee; the institutions sub-committee; the staff sub-committee; and the special branches sub-committee. [52]

For the purpose of the administration of poor law relief the L.C.C. has, under the authority of its administrative scheme, divided the County of London into ten areas, each comprising two or more metropolitan boroughs. Sect. 5 of the Poor Law Act, 1930 (*m*), relating to the appointment of "guardians committees" does not apply to London, where the matter is governed by sect. 122 (2), which provides for the appointment of "(a) such sub-committees of the public assistance committee (in this section referred to as 'local committees') consisting wholly or partly of members of that committee; and (b) such sub-committees of local committees consisting wholly or partly of members of the local committees" as the council's administrative scheme may provide. By sect. 122 (3) (*n*), the functions of local committees are "such as may be provided by the scheme," and "such functions, being functions which under the foregoing provisions of this Act are to be discharged by guardians committees or sub-committees thereof, as may be provided by the scheme, shall in accordance therewith be discharged by the sub-committees of local committees." In pursuance of the powers accorded by this section and by the council's administrative scheme, an "area committee" consisting of eleven or fifteen persons, some of whom are members of the public assistance committee and some co-opted, has been appointed, for each of the areas referred to above, and each area committee has a number of "district sub-committees" (two or three according to the size of the area and each consisting of nine members) in the constituting of which a further process of co-option takes place. An "assessment sub-committee" of each area committee is similarly appointed. [53]

Adjudicating Officers and Assessment Officers.—The council's arrangements for the administration of relief provide for all applications for relief (other than domiciliary relief to the sighted dependants of blind persons), to be submitted to "adjudicating officers" specially appointed by the council for the purpose. To these officers has been delegated the power to grant relief subject (i.) to regulations made by the council to govern such grants, (ii.) to the reservation of certain classes of cases for consideration by the area committees or the district sub-committees (or the special branches sub-committee of the public assistance committee in cases of non-resident relief), and (iii.) to the right of any applicant to ask for reconsideration of an adjudicating officer's decision by the area committee (or the special branches sub-committee of the public assistance committee in cases of non-resident relief). On comparable lines certain functions related to the recovery

of the cost of relief have been delegated to "assessment officers" with co-ordination and supervision by the assessment sub-committees. The necessary approval by the Minister of Health of the appointment of the adjudicating officers and assessment officers referred to above has been given in the L.C.C. (Adjudicating and Assessment Officers) Order, 1935, which prescribes the duties to be performed by these officers.

There are twenty-five adjudicating officers each with an assistant, and there is one assessment officer in each of the ten administrative areas. [54]

Modifications of the Public Assistance Order, 1930, in its Application to London.—To meet special circumstances in the County of London, the Public Assistance Order, 1930, in its application to London, has been modified in a number of minor respects by an instrument dated July 2, 1930, made by the Minister of Health under Art. 8 of the order. This provides, *inter alia*, that in the application of the order to London, a reference to the public assistance committee or the management committee in relation to any function shall be read as a reference to the public assistance committee or such other committee as may under the administrative scheme have the duty of discharging that function; that the authority given under Art. 14 of the order to undertake without further consent on the part of the Minister the enlargement, alteration or improvement of any poor law institution where the works do not involve expenditure exceeding £1,000 shall be extended to works involving expenditure not exceeding £3,000; and that Part VI., relating to the boarding-out of children, shall be amended by the omission of Art. 96, which provides that no child shall be boarded out in a home within the administrative County of London; and certain provisions relating to boarding-out committees have also been thereby modified. [55]

OUTDOOR RELIEF

General Policy and Arrangements.—The administration of outdoor relief in London is governed generally by the provisions of the Poor Law Acts, the Public Assistance Order, 1930, the Relief Regulation Order, 1930, and the L.C.C. (Adjudicating and Assessment Officers) Order, 1935, which permits relief, institutional and outdoor, to be granted, subject to certain reservations, by "adjudicating officers." The County of London is divided into some 200 general relief districts each in the charge of a relieving officer. Night and week-end offices are provided to serve suitable groups of relief districts after office-hours at the day relief offices. The council has prescribed regulations for the administration of outdoor relief which lay down a general standard for measuring the needs of an applicant for relief, and which indicate the proportion of the income or means of an applicant and members of his household which is to be regarded as available towards the support of the applicant and his dependants. The regulations are framed so as to allow the exercise of discretion in individual cases. In addition to the regulations made by the council, guidance is given by the public assistance committee in a memorandum issued to members of area committees and district sub-committees and to adjudicating officers (o).

(o) This memorandum "Administration of Relief—P.A. 5" has been placed on sale and can be purchased from P. S. King & Son, Ltd., 14, Great Smith Street, Westminster, S.W.1. (price 1s.).

Relief in kind is provided by means of tickets which the recipient may present to any tradesman whose name is included upon a panel regulated, in each area, by the area committee. Any tradesman whose premises are situated within the area may, on application, be placed upon, and retained on, the panel unless or until the area committee are satisfied that he should not be admitted to, or continued upon, the panel. Tradesmen whose names are on the panel are required to allow the council a discount of 3 per cent., but such discount is not made from accounts for less than £10 in respect of any four-weekly period of payment. [56]

Training and Instruction of Able-bodied Men to whom Outdoor Relief is Granted.—In developing its arrangements under Art. 6 of the Relief Regulation Order, 1930, relating to the setting to work, training and instruction of able-bodied men who are receiving outdoor relief the council has established a number of non-residential training centres at which instruction is given in boot-repairing, carpentering and other suitable occupations as well as physical and educational training. The main object of the centres is to maintain employability and assist in restoration to independent life. A man is not usually required to attend a centre until a period of 13 weeks from the date of his first application for relief has elapsed.

In order to afford opportunities for seeking work, men are not required to attend the centres in the mornings and the total period of attendance has been fixed at twenty hours a week. Registered dock workers in attendance at the centres are allowed to answer the afternoon call at the docks. Supervising officers at the centres have discretionary power to excuse attendance to enable a man to follow up a vacancy. These officers make inquiries as to vacancies and select and recommend suitable men under training. A man's attendance at the centre is notified to the employment exchange at which he is registered, and is accepted by the employment exchange as equivalent to his signing on for the purposes of the Unemployment Insurance Acts. Where practicable, men are allowed to choose the classes in which they desire to receive instruction. No man is required to receive training or instruction if he objects to doing so, but instead he is given utilitarian work in and about the centre. So far as setting to work is concerned, men are not engaged on work which would otherwise be done for wages. Before allocation to a training centre each man is examined by the district medical officer as to his fitness for training unless he signs a statement that he does not wish to be examined. [57]

Outdoor Relief and Unemployment Insurance.—From the public assistance standpoint the operation of the unemployment insurance scheme in London has no special features to distinguish it from the operation of the scheme in other parts of the country. [58]

INSTITUTIONAL RELIEF

Institutions.—When the L.C.C., in April, 1930, took over the poor law services in London a number of institutions, transferred from the boards of guardians, were placed under the management of the public assistance committee while others were transferred to the care of the central public health committee (now designated the hospitals and medical services committee). Generally these institutions were "general mixed workhouses," containing infirm, healthy aged, able-

bodied, chronic sick, infants and other classes of inmate. The council decided on a policy of reclassification and re-organisation by which institutions will ultimately be reserved for particular classes and inmates and patients will be re-allocated between the two committees on the following basis: (i.) inmates or patients to whom the primary approach should be medical (*i.e.* those who should be seen, examined and supervised by the medical officer without request by the inmate or by an attendant) to the hospitals and medical services committee; (ii.) those who are in need of assistance because of destitution and do not fall within (i.) above, to the public assistance committee. Under the scheme the public assistance committee will be responsible for the care of the able-bodied, the "healthy" (the healthy aged and such other inmates as are incapable of continuous daily work but are able to look after themselves), the infirm, healthy children pending their transfer to schools under the management of the education committee and healthy infants not separated from their parents. Standard dietaries have been prescribed and rules have been made governing such matters as leave and visits to relatives, visiting of inmates by relatives and friends, and by religious bodies and societies, allowances of tobacco (men) and sweets (women), searching of inmates, hours of meals, rising and retiring, Christmas extras, etc. [59]

Homes for the Aged.—The majority of the aged were formerly housed in general mixed institutions which were unsuited to their particular needs. A policy of providing small homes reserved solely for the use of the aged is being pursued. [60]

Residential Training Centres.—The council has three residential training centres in Surrey, Suffolk and Essex, where the curriculum is designed to maintain physical and mental fitness and employability. The cases of all trainees are reviewed at intervals not exceeding three months, and suitable men are returned to London in order that they may have an opportunity of seeking employment in their own district. In addition trainees are allowed leave of absence and travelling expenses to enable them to visit their homes and friends. There are welfare and employment officers at the centres whose duties are to help the men to find outside employment and to assist in organising lectures, concerts, indoor games and other social activities. A welfare fund has been instituted at each centre for providing fares for trainees when seeking or taking up outside work and in assisting men when taking up employment to maintain themselves until the receipt of their first week's wages. [61]

Children's Receiving Homes.—These are used for the reception of children pending their transfer to residential schools or homes under the management of the education committee or their discharge to their homes. Stay is limited to about two weeks. [62]

Voluntary Establishments.—In some cases of physical, mental or moral defect institutional relief is provided in the form of maintenance in specialised establishments conducted by voluntary organisations. [63]

Casuals.—There are at present nine casual wards in London used for the relief of "destitute wayfarers and wanderers." The accommodation in these casual wards is for men only, women casuals being accommodated in public assistance institutions. The nine casual

wards are open to admit applicants daily between 6 p.m. and 8 a.m. and they are so distributed that the wayfarer entering or leaving the county may find the relief he requires without having to walk too great a distance. The wards are administered in accordance with the provisions of the Public Assistance (Casual Poor) Order, 1931, which specifies not only the general routine to be followed in the treatment of the casual, but the food he is to receive and the length of his stay. Supplementing the casual ward accommodation in London is a hostel to which are sent men admitted to the casual wards or applying to the L.C.C. Welfare Office (see *infra*) who are considered to be likely to respond to assistance. Every effort is made to help them to obtain employment or to return to their relatives and friends or otherwise regain their independence. The L.C.C. Welfare Office (formerly the Homeless Poor Night Office), which is situated under Charing Cross Railway Bridge, is open daily from 10 a.m. to 2 a.m. for the purpose of dealing with homeless destitute persons. Men and women directed to the office by the police or applying on their own initiative are interviewed and referred to a voluntary society's hostel, The Hostel, an institution or a casual ward, according to the circumstances of each case, under a scheme of co-operation with voluntary bodies. A central register of homeless persons applying for assistance in London is kept at the Welfare Office. [64]

Vagrancy.—Homeless destitute men in London can be divided into four main classes, viz.: (i.) the man definitely seeking work and wanting temporary shelter; (ii.) the man who, by reason of age or infirmity or both, has little prospect of obtaining employment but who clings to what he regards as the liberty of casual ward life instead of applying for institutional relief; (iii.) the casual labourer, who is not in continual work and who soon tires of a spell of work and is on the verge of becoming a casual; and (iv.) the habitual casual who does not want work.

Many of these men are attracted to London from the provinces in the hope of taking advantage of the better industrial conditions. This movement from the provinces is particularly noticeable during the winter months, and has become more marked in recent years, due probably to industrial conditions in London and the south of England generally having been better than in manufacturing centres in the North and Midlands. Every year, the highest numbers of applications at the London casual wards are made during the winter months. In the spring the numbers begin to fall, and they reach their lowest point in June or July, after which they again begin to rise. In view of the extent and special nature of the problem of vagrancy in the metropolis, it has not been thought desirable that the L.C.C., the destitution authority, should combine with other poor law authorities through a joint vagrancy committee. Despite the fact that there is more than sufficient accommodation in casual wards and the homes and shelters of voluntary societies for all destitute persons in London, the persistence of street-sleeping continues to cause concern to all bodies affected by the problem. Close attention has recently been given to this matter by the L.C.C. and the opening of the Welfare Office was one of the measures decided upon with a view to improving the position. The council also decided that it was desirable that there should be a greater measure of co-operation between voluntary and official bodies working for the homeless, and, to secure this, a consultative committee

was set up in October, 1935, to consider and advise upon the arrangements for the relief of the homeless poor. In addition to these measures, arrangements have been made for the compilation of a central register of homeless destitute persons applying for assistance in London. [65]

Residential Schools and Children's Homes, etc.—Educable children over the age of three years, for whom indoor relief is required, are provided for in residential schools and children's homes. There are twelve establishments of this kind, with accommodation for about 5,500 children, and there is also a small seaside convalescent home for thirty children. The L.C.C. in its capacity as a local education authority is prevented from administering these schools and homes under the Education Act, 1921, as public elementary schools because they are situated outside the County of London and, therefore, fall within the areas of other local education authorities. The establishments are of two distinct types, viz. (i.) those in which a school is incorporated, and (ii.) those in which the children are boarded and lodged, but go out to ordinary elementary schools as day pupils. The establishments are administered under the Poor Law Act, 1930, by the education committee of the council. The entrusting of the schools to the education committee has enabled the upbringing and education of the children to be brought within the main stream of the council's scheme of public elementary education. The children participate in scholarships, school journeys, educational visits, the circulating libraries, and other features of the elementary schools system. They are also given a fortnight's camp holiday each year, usually at the seaside. Where possible the schools have been re-organised on the lines of the report of the Government Committee on the Education of the Adolescent (the Hadow Report), to give them a change of school according to attainments between eleven and twelve years of age. In addition to the normal elementary education, trade training is provided for boys and domestic training for girls. Successful candidates for the council's scholarships continue to reside in the schools whilst attending establishments for higher education. The welfare of boys and girls placed in situations is, from the age of fourteen to sixteen, supervised on behalf of the education committee by after-care officers. This supervision is continued for two years, from the age of sixteen to eighteen, when the young persons would come again under the aegis of the public assistance committee unless they have been satisfactorily provided for in other ways. [66]

Training Ship.—Under sect. 135 of the Poor Law Act, 1930 (*p*), the council maintains the training ship "Exmouth," which is used for training selected boys, transferred at the age of twelve from the residential schools, who desire to enter the Royal Navy or the Merchant Navy. Voluntary cases from the council's elementary schools are also received. Only boys of good character and likely to make good at sea are admitted. [67]

Boarding out of Children.—Arrangements for the boarding out of children under the Public Assistance Order, 1930, are made by the education committee. The council exercises the greatest care in the selection of foster homes and the strictest attention is given to the home standard. The allowances to foster parents have been fixed on the

principle that little or no financial benefit should accrue from the care of a child. Provision is made for effective and continued supervision of each child boarded out. For this purpose a local voluntary visitor is found for each child after consultation with school authorities or local religious bodies. When a number of children has been boarded out in an area the voluntary visitors are formed into a boarding-out committee. The committee exercise a general supervision over children boarded out in their district and assist in finding suitable work for the children when they leave school. In addition to such local supervision, the council's inspectors visit each foster home at least once a quarter. Medical and dental treatment for boarded-out children is provided for by the appointment of local practitioners. [68]

Special Hospitals for Harmless Mental Patients.—Under the Lunacy Act, 1890, the duty of providing for the maintenance and care of patients of unsound mind under reception orders is imposed upon the county and county borough councils and the transfer of the functions of the former guardians to the councils made no alteration in this respect.

There is, however, a class of harmless certified patients who are detained in poor law institutions under sects. 24 and 25 of the Lunacy Act, 1890 (*q*). The responsibility for the care and maintenance of these patients is upon the mental hospitals committee under the provisions of the administrative scheme. Technically, however, the hospitals receiving these patients are poor law institutions and they are at present administered under authority given in sects. 123 to 126 of the Poor Law Act, 1930 (*r*). A large number of cases of mental deficiency also are provided for at these establishments, which have been "approved" for the purpose under the provisions of sect. 37 of the Mental Deficiency Act, 1913 (*s*). [69]

TREATMENT OF THE SICK

Hospital Treatment.—Sick persons requiring hospital treatment are usually accommodated in the general hospitals or special hospitals (*i.e.* for children, tuberculosis, infectious diseases and convalescent treatment) under the management of the hospitals and medical services committee of the council. As has been mentioned (*ante*, p. 21) these establishments have been "appropriated" for the purpose of the reception of the sick under the powers given in sect. 14 of the L.G.A., 1929 (*t*), and, generally, treatment received in these hospitals is not poor relief. It is, however, the council's practice to classify as "poor law patients" persons admitted to appropriated hospitals who have a fixed place of abode in some other county or county borough or who are neither settled in nor irremovable from the administrative county. This arrangement enables the council to recover from the county or county borough of residence or settlement the expenses incurred in the maintenance of such patients. Sick cases, usually of the chronic type, are also accommodated in a number of former "institutions" which are now administered as hospitals by the hospitals and medical services committee but which, as they have not been "appropriated," continue to be administered under the Poor Law Act, 1930. [70]

(*q*) 11 Halsbury's Statutes 27—29.

(*r*) 12 Halsbury's Statutes 1032, 1033.

(*s*) 11 Halsbury's Statutes 182.

(*t*) 10 Halsbury's Statutes 891.

Domiciliary Medical Relief.—Domiciliary medical relief is provided by district medical officers under the direction of the hospitals and medical services committee. See HOSPITAL SERVICES (LONDON). [71]

Dispensaries.—Sect. 127 of the Poor Law Act, 1930 (*u*), enables the Minister of Health by order to direct the L.C.C. to provide dispensaries, but no such order has been made. In certain districts the supply of medicines is undertaken at district dispensaries; but in outlying districts the services of local chemists are relied on. [72]

District Nursing.—District nursing is provided through the agency of local nursing associations to whom the council makes an annual grant under sect. 67 (c) of the Poor Law Act, 1930 (*a*). See HOSPITAL SERVICES (LONDON). [73]

STAFF

Chief Officer of Public Assistance.—The chief officer of public assistance in London is responsible for the efficiency of the administration of all forms of relief directly controlled by the public assistance committee, except the medical arrangements in connection with medical relief, whether provided in the home or in institutions. He exercises supervision over the administrative and clerical, relief and institutional staff of the public assistance department. He is the clerk of the public assistance committee and, except as regards legal and financial matters and questions relating to important decisions of the council, conducts the correspondence and other administrative business of the committee, its sub-committees and local committees. He communicates direct with the M. of H. and other state departments and with municipal and other local authorities on matters within the order of reference of the public assistance committee. For assessment purposes the chief officer of public assistance acts in a separate capacity as chief officer for recovery of expenses, and the assessment staff is distinct from the relief staff. [74]

General Staffing Arrangements.—In each of the ten areas into which the administrative county is divided there is a public assistance local office, in the charge of an area officer, with a staff divided into two groups, (1) administrative and clerical officers, and (2) relieving officers and their assistants. The administrative and clerical staff in each area is organised in six branches—the committee, finance, assessment, collection, registration and prosecution branches. The central office of the department, located at the County Hall, is organised in five divisions: (1) the General Purposes and Special Branches Division; (2) the Institutions Division; (3) the Staff Division; (4) the Accounting Division; (5) the Committee and Minuting Division. An inspectorate staff co-ordinates the work of the area committees and sub-committees by attending their meetings as representatives of the chief officer of public assistance, advising them, reporting generally on their work and bringing to the notice of the chief officer cases requiring special investigation. The inspectors also visit, inspect and report upon the institutions and other establishments under the management of the committee as well as homes controlled by voluntary organisations in which persons for whose maintenance or treatment the council is responsible are accommodated. [75]

(*u*) 12 Halsbury's Statutes 1033.

(*a*) *Ibid.*, 1002.

Relieving Officers.—The relief staff has an establishment of between 800 and 900 officers in the five grades of chief relieving officer, assistant chief relieving officer, district relieving officer, assistant relieving officer and relief clerk. A chief relieving officer, assisted by two or more assistant chief relieving officers, is at the head of the relief staff in each area and supervises the work of the district relieving officers who are in charge of the several relief districts comprised in the area. Under his directions also is a "pool" of assistant relieving officers and relief clerks, for allocation to work in the several districts as required. Immediate assistance can thus be afforded, as required, in any district; and wide and varied experience is available to assistant relieving officers and relief clerks. Appointments to the grade of district relieving officer are made only from candidates possessing the relieving officer's certificate of the Poor Law Examinations Board, and assistant relieving officers who are not in possession of this certificate on appointment are required to pass the necessary examination within a period of two years. A number of women officers, whose duties are mainly concerned with the cases of women and children, are employed in the grades of district relieving officer and assistant relieving officer. [76]

Poor Law Medical Officers.—All the medical staff, at both public assistance and public health establishments, are under the direction of the county medical officer of health. A medical officer is appointed to each of the twenty-five institutions, including the three homes for the aged, administered under the Poor Law Act, 1930. In fourteen cases the medical officer of the institution also holds the appointment of medical superintendent of an adjacent hospital. Such an arrangement results in close association between the two establishments, which is of advantage in the treatment of chronic sick inmates. At other institutions the duties of a medical officer are carried out by local practitioners who hold part-time appointments or, at three institutions, by whole-time medical staff. The three homes for the aged are medically supervised by the medical staff of adjacent hospitals. The appointment of district medical officers is dealt with in the title HOSPITAL SERVICES (LONDON), Vol. VII., p. 30. [77]

Masters and Matrons.—Each of the thirteen institutions under the management of the public assistance committee is in the charge of a master who is solely responsible for the good order and proper management of the establishment. A matron is also appointed at each of the institutions. With regard to four of the nine institutions under the management of the hospitals and medical services committee, there is a similar arrangement to that in the public assistance establishments mentioned above. At four other institutions the medical superintendent of an adjacent hospital is acting-master and in the remaining institution the medical officer, who is a full-time officer, acts as master. These arrangements have been made pending the appropriation of these institutions, which will be used for the treatment of chronic sick. A matron is in charge at each of three small homes for the aged and two children's receiving homes. The management of the three residential training centres, which are situated outside the county boundaries, and in which only able-bodied men are maintained, is in the hands of superintendents. The duties and responsibilities of an institution master are prescribed at length in the Public Assistance Order, 1930, made by the Minister of Health, and include the govern-

ment and control, subject to the directions of the appropriate committee, of all the officers and servants employed thereat. [78]

Chaplains.—Arrangements are made for spiritual ministration to the inmates of residential establishments by the appointment of chaplains of the Church of England, priests of the Roman Catholic Church and Free Church ministers, and by the attendance of visiting ministers of the United Synagogue. Church of England and Free Church Advisory Boards, consisting of representatives of the appropriate religious bodies, and of members of committees of the council charged with the management of the council's establishments, have been created to advise generally on matters connected with spiritual ministration to inmates of their respective denominations. The appointments of chaplains and ministers are usually made in consultation with representatives of the appropriate board. The United Synagogue, in consideration of an annual payment by the council, arranges for the attendance of a minister at each institution where there are Jewish inmates. Roman Catholic priests are attached to the staff at the majority of the institutions and Free Church ministers have also been appointed in a number of cases. At the remaining institutions where no priests or ministers have been appointed facilities are available for the voluntary visitation of Roman Catholic and Free Church inmates. [79]

MISCELLANEOUS

Accounts and Audit.—Financial arrangements accord with the council's general financial system. Annual estimates are submitted to the council through the finance committee, and upon these expenditure is voted by the council. No other expenditure may be incurred unless a supplemental or special estimate has been approved. All payments must be made by the comptroller, although advances may be made in certain cases; and all main accounts of the council must be kept by the comptroller. Each spending department is, however, responsible for the accuracy of its own accounts and these are dealt with in the public assistance department by the accounting division. A system of departmental audit by the comptroller of the council is in operation, and the council's accounts are audited by the district auditor appointed by the M. of H. in pursuance of sect. 219 of the L.G.A., 1933 (b). [80]

Recovery of Poor Law Relief.—Reference has been made above (pp. 21—22) to the appointment of "assessment officers" by the L.C.C. and to the duties of these officers as prescribed by the L.C.C. (Adjudicating and Assessment Officers) Order, 1935. The council has approved rules for observance by assessment officers and by assessment sub-committees when determining the amounts to be paid to the council by recipients of relief and the persons liable for their maintenance. As in the case of the standard of relief these rules allow for the exercise of a wide measure of discretion in individual cases. Subject to this proviso they indicate the deductions and allowances to be made from gross income for the purpose of arriving at "assessable income," and provide for the assessment to be made, normally, on the basis of

prescribed proportions of the assessable income, varying according to (i.) the relationship between the recipient of relief and the person assessed, and (ii.) the amount of the assessable income.

Under sect. 58 of the L.C.C. (General Powers) Act, 1934 (c), the council obtained powers to classify its hospitals and institutions into suitable groups and to fix a flat-rate maintenance charge for each group for the purposes of recovery of expenses under the relevant provisions of the Poor Law Act, 1930, and the L.G.A., 1929. Provision is made for the payment of "comforts allowances" to inmates of poor law establishments who are old age pensioners and whose pensions are collected and administered by the council, and any other commitments of the pensioner are met as far as possible out of the pension before any part of it is applied towards the cost of maintenance. The chief officer for recovery of expenses is responsible also for the recovery of expenses under sect. 16 of the L.G.A., 1929 (d), in respect of patients in the "appropriated" hospitals, and the staff engaged in this work includes almoners in the council's general hospitals. [81]

Settlement and Removal.—The L.G.A., 1929, and the Poor Law Act, 1930, brought about changes of great importance. On April 1, 1930, the administrative County of London became a single area for the purposes of removability and the acquisition of settlement. As the great majority of settlements are acquired by residence (for a period of three years), it is now possible for residence at a number of places within the county to be aggregated to complete the period. Thus, many persons who move about from place to place in London have become endowed with a settlement which, prior to April, 1930, they would not have acquired.

Full advantage is taken of the power of granting non-resident or non-settled relief. When an aged, infirm or sick person, or a widow with dependent children is in receipt of outdoor relief, removal is avoided by the continuance of relief (at the expense of the authority liable) where such person is residing.

In 1934, the L.C.C. made representations to the Minister of Health for the abolition of the law of settlement and removal on the ground that its cumbrous procedure was no longer appropriate to modern conditions in general and involved considerable hardship in many cases. [82]

Case-paper System.—Art. 16 of the Relief Regulation Order, 1930, requiring particulars of every application for relief to be recorded in a case-paper applies to London as to other parts of the country. A standard form of case-paper was instituted by the L.C.C. in 1930. On it are entered all the relevant particulars relating to the grant of relief and to the recovery, from the recipient or his relatives, of the cost of the assistance given.

Each of the ten areas is a separate unit for the purpose of the preparation, registration and filing of case-papers, but a case-paper from one area is readily accessible to officers or sub-committees of another.

Under the administrative scheme made by the L.C.C. for discharging its poor law functions, the public assistance committee are charged with the duty of keeping "all necessary co-ordinative records in regard

to persons who have received assistance through any committee or sub-committee of the council." No central register of all forms of assistance afforded by the council has, however, been set up.

In the London note to the title CASE-PAPER SYSTEM (Vol. II., p. 423) reference was made to co-operation by the public assistance committee of the council in metropolitan mutual registration of assistance. The committee's participation in mutual registration was, however, subject to review from year to year, and, on the occasion of the review which took place in 1934-1935, it was decided not to renew participation after March 31, 1935. [83]

Poor Law Offences.—In London, as in the rest of England, the poor law offences are those specified in the Poor Law Act, 1930, and in the Vagrancy Act, 1824.

All questions of instituting proceedings against persons other than officers of the council in respect of offences (excluding cases of discipline by inmates of institutions and casual wards) must be referred to the appropriate area committee, who decide the action to be taken. [84]

Rate-aided Persons of Unsound Mind.—The relieving officers of the public assistance department in London, as in other parts of the country, are responsible for taking the preliminary steps under the Lunacy Act, 1890, for the care of persons alleged to be of unsound mind, other than persons dealt with as private patients, for proceedings for certification and for subsequent removal to mental hospitals if necessary. Accommodation for the temporary reception of such persons for observation, preliminary to certification under the Lunacy Act, is provided at seven poor law institutions and at three of the "appropriated" general hospitals of the council. The procedure in these matters does not differ in London from that in other parts of the country.

In each of the ten administrative areas of the council the chief relieving officer has been appointed as the duly authorised officer of the council for the purpose of procedure under the Mental Treatment Act, 1930. When application is made to this officer for the purpose, it is his duty to take proceedings as prescribed under the Act for the care and treatment of such mental patients as are suitable for treatment under the Act. He is empowered to act on the request of the husband or wife or other responsible relative of a person for whose admission to a mental hospital as a temporary patient (sect. 5 of the Mental Treatment Act, 1930 (e)), application may be made. [85]

(e) 23 Halsbury's Statutes 157.

PUBLIC ASSISTANCE INSTITUTION

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See also titles :

CASUALS ;
INSTITUTIONAL RELIEF ;
PUBLIC ASSISTANCE AUTHORITIES ;

PUBLIC ASSISTANCE COMMITTEE ;
PUBLIC ASSISTANCE INSTITUTION MASTER.

Preliminary.—The council of each county and county borough as the public assistance authority is responsible for the institutions in its area transferred from a board of guardians under the L.G.A., 1929, and such institutions as have been erected since under the Poor Law Act, 1930 (a).

Workhouses were established under the Poor Law Amendment Act, 1834, and were provided in the first instance mainly for the relief of the able-bodied. Their administration was therefore intentionally deterrent. The sick, the aged and the infirm now greatly preponderate. From the old type of workhouse, which was a mixed institution, have developed specialised institutions such as hospitals for the sick, homes for the aged and children's homes. The Poor Law Commissioners of 1834 hoped that by enlarging the poor law area from the parish to the union the general workhouse might be abolished, and separate institutions established for different classes of persons. These aspirations were, however, never fulfilled except in the largest areas ; and the system of the mixed general workhouse persisted until the transfer of poor law functions to county and county borough councils under the L.G.A., 1929. Even now this has not been completely eradicated. There were, however, outstanding examples of boards of guardians which provided institutions for special purposes either singly or jointly with other boards of guardians, such as a colony for mental defectives which was established by certain boards of guardians.

The public assistance committee is responsible for the supervision and management of poor law institutions in its area, subject to the provisions of the council's administrative scheme (b).

The term workhouse (contained in the Poor Law Act, 1930), is now generally superseded by the term " Institution."

Since the transfer of poor law functions to the councils, particularly in counties, a number of old institutions have been closed as redundant and there has been a very great improvement and modernisation of other institutions throughout the country. There has also been improvement in classification. [86]

General Outline.—For the purpose of this title the term public assistance institution may be broadly interpreted to include: (1) the form of establishment formerly known as a workhouse and still described as such in the Poor Law Act; (2) a children's home; (3) a hospital administered by a public assistance committee; (4) an aged people's home; (5) a separate casual ward; and (6) any other specialised institution, such as an epileptic colony, institution for mental defectives, convalescent home, working boys' home, sanatorium or a training home.

"Institution" means any establishment provided by the council for the reception and maintenance of the poor, other than a hospital, children's home or separate casual ward (c).

"Hospital" means any poor law establishment recognised by the Minister as a separate establishment for the reception and maintenance of the sick, or persons requiring maternity treatment.

"Children's Home" means a home, or homes, whether grouped or scattered, provided by the council, under the charge of a superintendent or matron for the reception and maintenance of poor children other than children suffering from disease of body or mind, and includes a separate school.

"Casual Ward" means any ward, building or premises set apart or provided for the reception, relief or employment of casuals.

The Minister of Health may direct that an institution, hospital or children's home, or a ward therein, shall be used exclusively for the reception and maintenance of certain classes of inmate, and the Minister may fix a maximum number of inmates to be maintained therein (d). [87]

Control by Minister of Health.—See the title INSTITUTIONAL RELIEF, Vol. VII., p. 305, as to the power of the Minister to order the provision of workhouse accommodation, as to the necessity for obtaining the consent of the Minister to any structural alterations involving expenditure exceeding £1,000, as to the classification of inmates within institutions (e), and also as to the general power of the Minister to control the administration of the relief to the poor (f).

The Minister is empowered to direct the appointment by any council of such officers as he thinks fit, with such qualifications as he deems to be necessary, for superintending or assisting in the administration of the relief of the poor in any county or county borough, or in any area of more than one council united for the purpose. The Minister may define the duties to be performed by any such officers and direct the mode of their appointment and determine their continuance in office or dismissal (g). The Minister's powers in this respect have been generally exercised in the Public Assistance Order, 1930 (h). [88]

Acquisition and Maintenance of Institutions.—For the purpose of

(c) Public Assistance Order, 1930, Art. 6; 12 Halsbury's Statutes 1053.

(d) *Ibid.*, Art. 10.

(e) Poor Law Act, 1930, ss. 21, 22, 23; 12 Halsbury's Statutes 981, 982.

(f) *Ibid.*, s. 1.

(g) *Ibid.*, s. 10.

(h) 12 Halsbury's Statutes 1053.

their functions under the Poor Law Act, 1930, a county council has power to acquire, dispose of or otherwise deal with, land as for the purpose of their other functions and a county borough council as for the purposes of the P.H.A., 1936.

Under sect. 22 of the Poor Law Act, 1930 (*i*), the consent of the Minister must be obtained to any structural alterations to a workhouse involving an expenditure exceeding £500, but this is varied by Art. 14 of the Public Assistance Order, 1930 (*k*), which enables a council to enlarge, alter or improve any poor law establishment and provide proper drainage, ventilation, fixtures, surgical and medical appliances and other conveniences at any establishment subject to the expenditure in any particular instance not exceeding £1,000 or requiring a loan. [89]

Joint User of Institutions.—The joint user of an institution by more than one public assistance authority may be provided either by setting up a joint poor law committee (see title JOINT POOR LAW COMMITTEES, Vol. VII., p. 383) under sect. 3 of the Poor Law Act, 1930, or by entering into arrangements under sect. 82 or 83 (*l*).

If any council has surplus accommodation in its institution arrangements may be made subject to the consent of the Minister for admission thereto of persons chargeable to any other county or county borough upon such terms as may be agreed between the councils concerned (*m*). Any inmate dealt with under this provision is to be subject to the same regulations and liabilities as the other inmates of the institution, and is deemed to be chargeable in the first instance to the receiving county or county borough, but his residence in the institution shall, in all other respects, be attended with the same legal consequences as if the institution was situated within the county or county borough from which he was received. Similar arrangements may be made with regard to children (*n*).

The agreement for joint user of an institution may provide for the sending authority to have at its disposal a definite number of beds. The arrangements are in the discretion of the councils concerned, subject to the approval of the Minister, but the terms usually include a fixed ascertainable rent, together with a payment for each inmate at a fixed or variable rate of maintenance.

The form of agreement which has been adopted by a number of authorities provides for the reservation of a certain number of beds in the institution and for the payment in respect of the beds so reserved of the proper proportion of the annual "bed charge" in respect of each period of account, multiplied by the number of reserved beds, together with a payment in respect of the daily maintenance charge multiplied by the number of inmate days of the inmates chargeable to the council during the period of account.

[90]

For the purposes of this type of agreement the undermentioned expressions have the following meanings :

- (1) "Institution Establishment Charges" means all the charges for the year of account exclusive of loan charges and any capital expenditure which may properly be included under the heading "Establishment Charges," together with

(*i*) 12 Halsbury's Statutes 981.

(*l*) *Ibid.*, 969, 1008.

(*n*) S. 83, *ibid.*

(*k*) *Ibid.*, 1056.

(*m*) S. 82; *ibid.*, 1008.

- (a) Five per centum of such charges ;
 - (b) A charge in lieu of rent equal to seven per centum on the capital value of the institution.
- (2) "Institutional Maintenance Charges" means all the charges for the year of account of the classes which may be deemed to be included under this heading.
 - (3) "Annual Bed Charge" means the institution establishment charges for the year of account divided by the actual number of persons accommodated in the institution.
 - (4) "Daily Maintenance Charge" means the institution maintenance charges divided by the total number of Inmate Days of all inmates.

[91]

The Workhouse or General Poor Law Institution.—This has been dealt with specially under the title INSTITUTIONAL RELIEF, Vol. VII., p. 305. [92]

Aged People's Homes.—Power to provide old people's homes is consequential on the power of a county or county borough council to provide general institutional accommodation for the poor. A husband and wife, both of whom are above the age of sixty years, may not be compelled to live separate and apart from each other in a workhouse. Where either of such persons is infirm, sick or disabled, or above the age of sixty, it is lawful for the council to permit such husband and wife to live together, but every such case must be reported to the Minister (*o*). This is the only statutory requirement as to the type of institutional accommodation to be provided by a county or county borough council for old people ; but the Minister has expressed the view that persons who have habitually led decent and deserving lives should, if they require relief in their old age, receive different treatment from those whose previous habits and characters have been unsatisfactory, and suggested that the guardians should form a special class of inmates of sixty-five years and upwards, who by reason of their moral character or behaviour or previous habits, are sufficiently deserving to be members of the class (*p*). [93]

Since April, 1930, special accommodation for the aged has been provided by *inter alia* the Kent, London and Middlesex county councils. Other schemes are being carried out by the Oxford, Northumberland and Warwick county councils. The Northumberland scheme makes provision for accommodation in small unit groups, each house (accommodating twelve persons) being divided into two sub-units. Each house is to be self-contained with all accommodation for inmates on the ground floor. For the bedridden and temporary sick the infirmary type of unit is contemplated. This will comprise two wards of six beds, and two single wards. The Daisy Hill Homes at Bradford, which were erected in 1907 by the board of guardians, consist of fifty-six single-storey built bungalows, each consisting of one room and a scullery. Two persons are accommodated in each bungalow. Some authorities have found it suitable to convert large private houses for this purpose. The Dartford board of guardians in Kent established two homes of this character, one for forty-five aged men and the other for forty-eight women. The Middlesex county council are using three

(*o*) Poor Law Act, 1930, s. 28 ; 12 Halsbury's Statutes 984. It is the duty of the Institution Master to notify couples when this right exists (Public Assistance Order, 1930, Art. 168 (15) ; 12 Halsbury's Statutes 1081).

(*p*) Circular, August 4, 1930.

houses for this purpose—one to accommodate seventy-five old men and the other to accommodate seventy men, and a third to accommodate 200 men and women. The L.C.C. have provided a home for 100 men at Clapham. The homes provided by the Birmingham board of guardians, namely the Quinton Hall Home for Men and the Highbury Home for Women, are examples of larger buildings appropriated especially for this purpose. At Quinton Hall there is accommodation for 160 men, and at Highbury for 200 women. The Bristol city council has erected homes to accommodate 288 aged and infirm men and women. The homes, six in number, each accommodate forty-eight occupants and consist of ground and first floors with wards separated by large sitting-rooms. A modern and complete general institution for 280 old people has been provided by the Denbighshire county council at Wrexham. [94]

Poor Law Hospitals.—See also titles HOSPITALS and HOSPITAL AUTHORITIES as to hospitals provided under the P.H.As.

A hospital, as distinct from a mixed general institution, provided by the public assistance authority must be administered in accordance with Arts. 74—76 of the Public Assistance Order, 1930 (*q*). The chief officers of such a hospital are the medical superintendent, the matron and the steward.

The medical superintendent is required to perform the duties prescribed for an institution master under Art. 168, and of the medical officer of an institution under Art. 170, except in so far as any such duties are inapplicable in the case of a hospital, or are assigned to the steward by Art. 177 (*r*). The medical superintendent must reside in the part of the hospital assigned to him by the management committee or in such other place as the committee may approve (Art. 175). [95]

Subject to the general control of the medical superintendent, the matron must superintend the nursing staff and nursing arrangements (including the training of probationers), and the female servants and domestic arrangements. She must aid the medical superintendent in enforcing order, punctuality and the observance of all rules made for the guidance of the staff, and is responsible for the general domestic work. She must make certain reports to the house committee and the management committee, but these must be transmitted through the medical superintendent (Art. 176). [96]

The steward must generally act as storekeeper. He must superintend the male servants, other than male nurses, and aid the medical superintendent in enforcing order and punctuality, and the observance of all rules made for their guidance. Other duties are prescribed in detail by Art. 177. His reports, like those of the matron, must be submitted through the medical superintendent. It may be useful to draw attention to the special arrangement made by a number of councils as to the administration of some of their hospitals which have been administered under the Public Assistance Order pending the consideration of their appropriation under the P.H.A. [97]

Under this scheme it is recognised that the medical superintendent is primarily concerned with clinical work; that he should spend as little of his time as possible on administrative matters; and that his position as chief executive officer must be acknowledged. His duties are as follows:

(1) Govern and control, subject to the directions of the public

assistance committee, the hospital and its staff, and obey, or cause to be obeyed, all regulations relating to the management of the hospital.

(2) Perform the duties of medical officer as prescribed by Art. 170 of the Public Assistance Order, 1930 (s), except those contained in para. (5), (8) and (9). (3) Give to the officers in charge of the sick all necessary directions in regard to the treatment and nursing of the patients and in any case of urgency obtain the services of a temporary nurse. (4) Take all necessary steps in every case of serious or dangerous illness to see that the proper action is taken by notification to relatives or otherwise. (5) Within 48 hours notify the coroner, in such form as may be prescribed, of the death of any person of unsound mind or alleged to be of unsound mind. (6) Give to the public assistance officer due notice of any inquest proposed to be held upon the body of a deceased patient. (7) Report to the guardians committee any case in which a patient desires to make a complaint or application. (8) Keep all medical records of the hospital, in such form as may be required by any order of the Minister of Health or the council. [98]

Certain duties which would otherwise be carried out by the medical superintendent have been delegated to the steward, and on such duties the steward reports direct to the committee, and not through the medical superintendent, as under the Public Assistance Order; but no report may be submitted until after consultation with the medical superintendent. The steward is given definite responsibility for general administration and the supervision of certain male staff. If it should be necessary for disciplinary action to be taken in regard to any particular officer or servant, who is under the superintendent or the steward, the matter must be reported to the medical superintendent for necessary action. It is provided that the medical superintendent would not desire to interfere with the detailed day-to-day supervision of such staff, but he would expect the steward to carry out this duty on his behalf. The steward must discharge the following duties and/or such other duties as may be prescribed from time to time by the council with the consent of the Minister of Health, and must discharge such duties under the general supervision of the public assistance officer:

(1) Receive, take charge of and issue as required, all provisions and other articles purchased for use at the hospital, or confided to his care by the management committee, except drugs and surgical appliances. (2) Superintend all male officers and servants (other than nurses and other officers and servants under the direct control of the medical superintendent), and aid the medical superintendent in enforcing order and punctuality, and the observance of all rules made for their guidance. (3) Account for all money, stores or other property under his charge. (4) Make out such statistical, financial and other statements, returns and reports, and supply all such information in relation to matters within his knowledge as may be required by the public assistance officer and/or the county medical officer, and/or the county accountant. (5) Keep the accounts and records of the hospital (other than medical records) in such form as may be required by any order of the Minister of Health or the council, and within three days notify every birth or death to the Registrar of Births and Deaths. (6) Take charge of and be responsible for the clothing, valuables and other property of the patients on the receipt thereof from the responsible officer. (7) Keep an inventory of all fixtures, furniture, utensils, bedding, house linen

and other effects, stock and other like property in the hospital and on the hospital premises, with particulars of the use, sale or other disposal thereof; also keep a record of articles acquired by purchase or otherwise and of articles condemned as worn out, sold or otherwise disposed of, on the directions of the management committee. (8) Be responsible for the proper heating and lighting of the hospital as required by the medical superintendent and the general maintenance of the furniture and equipment (other than medical or surgical equipment). (9) Report forthwith for the attention of the county architect all repairs or maintenance required in connection with hospital buildings, except minor works which can be carried out by the institution staff. (10) Superintend the management of the grounds, gardens, farm and live stock, if any, connected with the hospital, and keep account of same, shewing the produce thereof and its appropriation. (11) Undertake the general management of the engineering services, the laundry and kitchen. (12) Attend meetings of such committees as may be required. (13) Where notified that the life of any patient is in danger immediately inform: (i.) the nearest relative; (ii.) any other person by whom the patient desires to be visited; and (iii.) the chaplain or a minister of the creed of the patient. On the death of a patient: (i.) give information thereof by post or otherwise to the nearest relative; (ii.) if the body of the patient be not removed within a reasonable time, provide for the proper disposal thereof; and (iii.) prepare an inventory of any property which belonged to the deceased patient. (14) Notify the nearest relative of the transfer of any patient to any other hospital or institution and inform the officer in charge of the patient's usual place of abode and the name and address of the patient's nearest relative. When any inmate who is the head of a family gives notice of his intention to take his discharge, notify the fact to the officer in charge of every establishment of which any member of the family is an inmate. (15) Submit, for consideration by the house committee at each meeting, reports on any matters connected with his duties as acting master, and after consultation with the medical superintendent on hospital matters delegated to him, which in his opinion should be brought to the attention of the committee, including an estimate of the provisions and goods required for use in the hospital before the next meeting of the committee, and a statement as to the purchase of any articles or any other expenditure which has been incurred by him in a case of urgency. (16) Submit, for consideration by the guardians committee and transmission to the public assistance committee, at the first meeting of the guardians committee after the first day of January and the first day of July in each year, a general report upon matters touching his office and duties as acting master and after consultation with the medical superintendent on matters connected with those hospital duties delegated to him, and any other matters which the guardians committee or public assistance committee may prescribe. (17) Take charge of the ambulance and other motor vehicles and be responsible for the general maintenance thereof. [99]

Sanatorium Accommodation.—The provision of sanatorium accommodation is normally dealt with by the council under its public health powers, but as evidence of a useful type of accommodation provided under poor law administration, reference may be made to the erection of a sanatorium in Cheshire by the former joint board of the parish of Liverpool, Union of West Derby, Township of Toxteth Park, for patients

suffering from tuberculosis in its curable stages. This hospital was subsequently transferred to the West Derby Union, which constituted the amalgamated area as from April 1, 1932. [100]

Convalescent Homes.—Some public assistance authorities maintain convalescent homes, mainly for children, but also for adults requiring convalescent treatment after discharge from hospital. [101]

Mental Deficiency Institutions.—The provision of institutional accommodation for mental defectives is a function of each county and county borough council under the Mental Deficiency Acts, but in order to avoid unnecessary expense in erecting separate institutions for mental defectives, a certain number of poor law institutions, or parts of institutions, are approved by the Board of Control, under sect. 37 of the Mental Deficiency Act, 1913 (*t*). There are approximately 130 institutions so approved, providing accommodation for over 5,000 men, women and children. [102]

Working Boys' Homes.—Working boys' homes have been established by, *inter alia*, the Bristol, Burnley, Blackburn, Cardiff, Kent, Liverpool, Norfolk, Sheffield, Stoke-on-Trent, and Wrexham Public Assistance Authorities. It is usual for a superintendent and matron to be in charge of these homes. Boys who are found situations after leaving the public assistance institutions and children's homes are accommodated in the working boys' home until they are self-supporting. In some areas the working boys' home is administered by the education committee on behalf of, and subject to, the general direction and control of the public assistance committee. The M. of H. seem now to favour placing boys in lodgings and, if necessary, supplementing their earnings by grants of relief, instead of a separate boys' home. [103]

Children's Homes.—A child other than an infant may not be retained in a general institution for a period exceeding six weeks unless (a) the child is an inmate of the sick wards, or (b) the child is retained on medical grounds with the approval of the medical officer (*u*). Such a child must therefore be transferred to a children's home, or boarded-out, or sent to an institution maintained by a voluntary organisation.

The term children's home includes a separate school to which sect. 53 of the Poor Law Act (*a*) applies. The Minister may under this section direct the council of any county or county borough to acquire and equip any suitable building as a separate school and may issue rules, orders and regulations for the government of any such school, and the inmates thereof, as if the school were a workhouse. An inspector of the Board of Education may visit any separate school and inquire into the proficiency of the scholars.

The more usual practice, however, except in the case of very large establishments, is for children in a home belonging to a public assistance authority to attend the schools provided by the local education authority. Separate schools which have been provided by public assistance authorities are large establishments where a considerable number of children are maintained, and where industrial training is given to the boys, and domestic training to the girls.

Another type of children's home is the grouped cottage home, consisting of a number of houses within the same curtilage, each house

(*t*) 11 Halsbury's Statutes 182.

(*u*) Public Assistance Order, 1930, Art. 27; 12 Halsbury's Statutes 1058.

(*a*) 12 Halsbury's Statutes 996.

under the control of a foster mother. There is usually a superintendent and matron in charge of the group.

Another type of home is provided by the scattered home system, under which children are accommodated in a number of different houses in the locality. [104]

The council, usually acting through the public assistance committee if authorised by the administrative scheme, must prescribe the duties of the management committee and the house committee for each children's home (Art. 70).

Arrangements may be made for children from the home to attend a holiday camp.

The mode of admission and discharge are prescribed by Arts. 78 and 80 of the Order.

The medical officer must examine each child as soon as practicable after admission. Proper health records must be kept (Art. 79).

Dietary tables must be prescribed for the different classes of children or the council may prescribe the maximum quantity of specified articles of food which may be issued each week in respect of each child. This must be done by the council, or public assistance committee acting under delegated powers, after obtaining a written report from the medical officer. Each child must, however, be fed according to appetite. It is more usual to prescribe maximum quantities and allow discretion to the officers of the home in settling details of diet than to prescribe fixed dietary tables. Where maximum quantities of food are prescribed the description of each meal served to the children must be recorded and a book kept for the purpose (Art. 81).

A Report on "Diets in Children's Homes" dated November 30, 1931, by an advisory committee of the M. of H., contains much useful information on this subject (b).

A further Report dated December 5, 1931, was issued on "The Criticism and Improvements of Diets." This was intended to provide suggestions for medical officers of health and others in advising upon the nutritional value of diets, whether for individuals or institutions (c). [105]

Every child capable of working must be trained and instructed in some branch of industry, or in household or other useful work suitable to the age and sex of the child (d). It is now generally considered that children attending school should not be required to do any considerable amount of domestic work, but after leaving school they may be afforded some measure of training in the home, or sent to an outside institution for training. Miscellaneous instructions are contained in Arts. 83—90 as to the management of children's homes, visitation of children, the keeping of medical records and the punishment of children. Pocket money in the nature of good conduct money for individual children may be granted without any sanction of the Minister, but not indiscriminate payment for pocket money (e).

The superintendent of a children's home must perform the duties prescribed for the master of an institution by Art. 168, with any necessary modification except in so far as any such duties are inapplicable in the case of a children's home. He must also arrange for, and

(b) Transmitted to public assistance authorities with M. of H. Circular 1243.

(c) M. of H. Circular, March 21, 1922.

(d) Public Assistance Order, 1930, Art. 82; 12 Halsbury's Statutes 1068.

(e) Letter from the M. of H., 1929.

superintend the industrial training and employment of the boys and make appropriate reports to the house committee (Art. 178).

The medical officer of the homes must perform the duties prescribed for the medical officer of an institution by Art. 170, with any necessary modifications except in so far as any such duties are inapplicable in the case of a children's home. He must also keep proper health records and make any suggestions he considers requisite in connection with the health of the children generally.

The Local Government Board expressed the opinion that it is the duty of the medical officer to give such attention as would ordinarily be expected from a medical man, but they thought it desirable that an officer with special qualifications in dentistry should be appointed by the guardians to examine and attend to the teeth of the children in the home. If children in children's homes are attending the local school provided by the local education authority they will come within the ordinary scheme for the examination of children by the school dentist. In some areas the visiting and inspection and management of the children's homes provided by the council as the public assistance authority is discharged on behalf of the public assistance committee by the education committee. [106]

Casual Wards.—Casual wards are normally attached to the general institution, but in recent years there has been an increasing number of separate casual wards erected. [107]

Visitation of Institutions.—See title INSTITUTIONAL RELIEF, as to visitation of institutions by members of the house committee (f). If any council does not appoint a committee for the purpose of visiting any of their workhouses, or if three months have elapsed during which a visiting committee have not visited a workhouse, the Minister must appoint a visitor, not being a member of the council, at a salary to be fixed by him and paid by the council (g). This provision may be considered to be obsolete in practice and is merely a re-enactment of former statutes.

Any justice of the peace having jurisdiction in a place where a workhouse is situated may visit and inspect the workhouse at such times as he may think proper for the purpose of ascertaining whether the rules, orders and regulations made by the Minister, and applicable to the workhouse, are duly observed and obeyed therein, and may examine into the state and condition of the inmates and their food, clothing and bedding, and the state and condition of the workhouse. If in the opinion of the justice the rules, orders or regulations, or any of them, have not been duly observed and obeyed in the workhouse, it is lawful for him to summon the person offending to appear before a court of summary jurisdiction to answer any complaint touching the non-observance, and the offender is liable, on summary conviction, to a fine not exceeding £5 (h). This provision may also be deemed to be generally obsolete in practice. [108]

Management of Institutions.—Guardians committees may undertake the visiting, inspection or management of any poor law institution in their area if the public assistance committee so requests (i). In

(f) Public Assistance Order, 1930, Art. 72; 12 Halsbury's Statutes 1065.

(g) Poor Law Act, 1930, s. 24; 12 Halsbury's Statutes 982.

(h) *Ibid.*, s. 25.

(i) *Ibid.*, s. 5 (3); 12 Halsbury's Statutes 972.

many counties the definite responsibility for the management of transferred institutions is retained by the public assistance committee, but certain of the functions in this respect have been entrusted to guardians committees, such as the duties imposed on the management committee by the Public Assistance Order, 1930 (*k*), which it may be deemed more convenient to be undertaken by the house committee in a large county. Any such arrangement is, however, within the discretion of the public assistance committee. [109]

Appointment of Staff.—The Public Assistance Order, 1930 (*l*), contains detailed provisions as to the appointment of staff at public assistance institutions and as to the duties of certain of the officers.

At every institution the council must appoint a master, matron, medical officer and chaplain, and, if the institution contains not less than one hundred beds for sick inmates, a superintendent nurse.

At every hospital there must be appointed a medical superintendent, matron, steward and chaplain.

At every children's home the council must appoint a superintendent or matron, medical officer and chaplain, and (when requisite) a schoolmaster and schoolmistress.

At every separate casual ward there must be appointed a superintendent, medical officer and chaplain and (when requisite) a matron.

At any institution which does not include adult male persons it is not necessary to appoint both a master and a matron (Art. 143). The Minister of Health has occasionally given approval to the appointment of a matron in charge, to carry out the duties of master and matron, even although there are adult male inmates.

A person holding one of the foregoing appointments is termed a senior poor law officer; but the officer in charge of a children's home of not more than thirty children is not to be deemed to be a senior poor law officer (Art. 144). [110]

At each institution at which there are three or more nurses employed, the council must, if there is no superintendent nurse, appoint a person (who may be one of those already employed) to be head nurse (Art. 145). At each institution the council must, if the staff does not include a trained nurse, either appoint such an officer or make arrangements whereby skilled nursing attendance may be available.

The council may employ probationer nurses at institutions or hospitals which are for the time being approved for that purpose by the Minister. In such circumstances the council must provide proper facilities for their training in the theory and practice of nursing (Art. 147). It is a matter for the General Nursing Council to approve institutions for this purpose, but the approval of the Minister must also be obtained.

The council may from time to time appoint such other officers (including religious instructors) as they may think necessary (Art. 148).

The council may also appoint or employ suitable persons as assistant officers or temporary substitutes for officers, together with such servants as they think fit (Art. 150).

The council may make reasonable arrangements, on such conditions

(*k*) See Arts. 26, 41, 50, 52, 53, 57, 58, 65, 69, 71, 72 (*d*), 80, 84, 87, 137, 140 and 178.

(*l*) Art. 143; 12 Halsbury's Statutes 1075.

as they may deem proper, for the residence in the establishment of members of the family of a resident officer (Art. 154).

Provision is made by Art. 156 for certain appointments, not necessarily of married couples, to be treated as joint appointments, the termination of the office of one of which renders the office of the other vacant. [111]

No person may be appointed a master, superintendent or steward who has not had previous experience as an officer in local government or poor law administration, in an office the duties of which are similar to those of the office to which it is proposed to appoint him, or such other experience as the council, with the consent of the Minister, may prescribe (Art. 159).

No person may be appointed as a matron of a hospital unless she is a trained nurse and has had at least two years' experience as an assistant matron and superintendent nurse, or in another similar office. Nor may a superintendent nurse or head nurse be appointed unless she is a trained nurse, or was holding the office of superintendent nurse, or head nurse as the case may be, on April 1, 1930.

The general duties of institution officers are prescribed by Art. 164.

For duties of master, see the title PUBLIC ASSISTANCE INSTITUTION MASTER.

The duties of the medical officer of the institution are prescribed by Art. 170, of the matron by Art. 171, of the superintendent nurse by Art. 172, of a head nurse by Art. 173.

The duties of chaplains and religious instructors are prescribed by Art. 174. The person to be appointed chaplain must be a member of the Church of England, but religious instructors may be Roman Catholics or Nonconformists. In practice such officers are often termed chaplains, although this is not strictly in accordance with the regulations.

The council may appoint a Roman Catholic clergyman to act for the spiritual needs of Roman Catholic inmates (*m*). [112]

Costing Returns.—The M. of H. issue annual returns as to the cost of maintenance in all the principal institutions for the poor and the sick administered by local authorities. These returns are compiled from statistics prepared by the local authorities. The purpose of these returns is to assist local authorities in the economical administration of the institutions under their control. It has been pointed out by the Ministry that a costing return for a particular institution is of value, by itself, to the council to which the institution belongs; but the principal value of the returns is lost unless they are available for comparative purposes to all local authorities who administer similar institutions. Statements are therefore compiled shewing the average weekly cost per inmate under the various heads of expenditure in each institution, or group of small institutions, in various classes, together with certain additional information which should assist in the utilisation of the figures for comparative purposes.

The statements are divided into three parts: Part I. relates to poor law hospitals and general hospitals, Part II. to poor law institutions and casual wards, and Part III. to children's homes maintained under the Poor Law Act.

Part I. brings together the costing returns for all the principal institutions of local authorities for the treatment of persons in need of medical or surgical care and attention. [113]

A number of factors must be taken into consideration before a

proper comparison can be made of the average cost of the different institutions. It has been pointed out by the Ministry that some of these factors are the relative size of the staff, the design of the building, its distance from a railway station or other distributing centre, the nature and degree of the disease or disability from which the inmates are suffering, the extent to which the available accommodation is used, and the amount of the charges for outstanding debt. Such statistical information bearing on these factors, as is available, is given in the tables, and, as regards loan charges, two figures are given for the total average cost for each institution, one including and the other excluding loan charges. The detailed figures form valuable pointers to the items which should be carefully scrutinised in order to secure that the cost of the institution is not inflated by avoidable waste or faulty management.

In order to secure a large measure of comparability, capital expenditure met out of revenue is omitted from the total average cost throughout, and certain items relating to superannuation, which are differently treated in the accounts of different councils, are omitted from the total average cost of poor law hospitals and general hospitals. The net amount of these omitted items is given in an additional column so that the whole cost of the hospital or institution per inmate per week may be ascertained.

Expenditure and notes are given at the end of each volume which deal, among other things, with the different items which are included in certain headings of the expenditure. The return is issued annually to March 31.

In the case of institutions, a further adjustment is necessary in connection with certain poor law institutions. Where casuels are maintained in a casual ward which is administered as part of a general institution, it is impracticable to state separately the expenditure on their maintenance. [114]

PUBLIC ASSISTANCE INSTITUTION MASTER

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See also titles : CASUALS ;
INSTITUTIONAL RELIEF ;
PUBLIC ASSISTANCE INSTITUTION ;
PUBLIC ASSISTANCE OFFICER.

Introductory.—The workhouse master was one of the officers required to be appointed by each board of guardians under the General Consolidated Order, 1847, and the appointment has been continued

until the present time. In early days this officer was known as the governor, by which title he is still described in Scotland. Some local authorities in recent years have thought the term rather inappropriate and have described the officer in charge of an institution (still known in the Poor Law Act as the workhouse) as the superintendent, particularly where the whole of the inmates of the institution are aged persons. But the Minister of Health has pointed out that although such a title may be adopted for local use the term master should be used in connection with the officer's formal appointment and for certain purposes under the Poor Law Act, 1930, the Lunacy Act, 1890, and the Public Assistance Order, 1930, in view of the statutory duties and responsibilities imposed on the workhouse master thereby.

As the chief executive officer of the institution his powers and duties are concerned mainly with its internal management. He is responsible for its administration, subject to the directions of the management committee and the house committee. His duties are prescribed by Art. 168 of the Public Assistance Order, 1930 (a). It is a practice in some areas for the master to consult the chairman of the committee if any emergency should arise requiring attention between meetings of the committee, but he must take all necessary action in connection with the routine administration of the institution. [115]

Appointment of Master.—The council of each county and county borough is required to appoint a master for every public assistance institution in its area (Public Assistance Order, Art. 143). It has been usually considered that the good order and management of the institution, and the welfare of its inmates are promoted by the offices of master and matron being filled by a married couple. The fact of the persons not being man and wife is not, however, a bar to the appointment. The appointment of the master and matron of an institution are joint appointments whether they be husband and wife or not, and the termination of the office of either of them renders the office of the other vacant, at the expiration of the quarter (Art. 156).

Special provision is made by sect. 14 of the Local Government Superannuation Act, 1937, with regard to holders of joint appointments. Where one of the holders of a joint appointment such as a master or matron ceases to hold his appointment, and the appointment of the other is thereby determined, then that other person, if he is a contributory employee, and has either attained the age of fifty years, or completed twenty years' service, is entitled to receive a superannuation allowance under the Act.

No person may be appointed a master who has not had previous experience as an officer in local government, or poor law administration in an office the duties of which are similar thereto, or such other experience as the council with the consent of the Minister may prescribe. This provision does not, however, apply if the officer to be appointed holds the master's certificate of the Poor Law Examinations Board (Art. 159). It is now becoming the general practice for councils to stipulate when making such an appointment that the officer to be appointed shall hold the certificate even although, as is usual, he has had previous practical experience of institutional administration. [116]

It is the general practice for the master to be required to live on

the institutional premises or in a separate house in the grounds attached to the institution.

There are other instances in which the Minister has approved of the duties of master being discharged by a matron-in-charge. This arrangement has proved satisfactory in the case of some small institutions and particularly where it is desired to re-appoint the matron on the death of the master, when it is then usual to appoint a qualified male officer as her chief assistant.

The Minister of Health exercises control over the appointment of institutional masters as in the case of other senior poor law officers (see title **PUBLIC ASSISTANCE OFFICER**). [117]

Duties of Master.—The duties of the master are prescribed in considerable detail by Art. 168 of the Public Assistance Order, 1930. His primary function is described therein as to govern and control, subject to the directions of the management committee, the institution and the staff, and obey, or cause to be obeyed, all regulations relating to the management of the institution. He must receive and take charge of all provisions and other articles purchased or procured for the use of the institution and issue therefrom as required. He must insure that all persons requiring medical care are seen by the medical officer and give notice of sickness or death to relatives, and keep numerous institutional records and books. It is his duty to bring before the committee—or if the inmate so desires, before the management committee—any inmate wishing to make a complaint or application. He must submit various reports at prescribed intervals to the house committee and the management committee. Reference should be made to Art. 168 for further details.

Certain other records are prescribed to be kept by the master, such as the workhouse register under sect. 27 of the Poor Law Act, and he has certain responsibilities for record papers of inmates discharged for medical care, or transferred to another establishment under the Public Assistance Order, Art. 42 (4) (5). He has certain duties in connection with inmates' dietaries, under Arts. 36 and 37. A master must admit to an institution any person applying for admission who may appear to him to require relief, through sudden or urgent necessity, although such person may not be in possession of an order for admission given by the council or by a relieving officer (Art. 25 (1) (c)). He is also under statutory responsibility to admit persons without such an order: (1) on the order of a justice, a person discharged from prison (b); and (2) a lunatic soldier and family (c). Subject to these special provisions he can only admit a person when accompanied by a proper admission order. The opinion was expressed by the Local Government Board that the master of a workhouse would not, in a case of urgent necessity, be legally justified in refusing to admit a person to a workhouse on the ground that such person was in an intoxicated state. A casual may be admitted to a casual ward by the master without an order (see title **CASUALS**, Vol. II., p. 440). [118]

Visitation and Leave of Absence of Inmate.—It is usual for the council to make regulations with regard to the visitation of inmates and leave of absence to be granted to inmates, but, subject to any regulations made

(b) Poor Law Act, 1930, s. 103; 12 Halsbury's Statutes 1024.

(c) Army Act, s. 91; 17 Halsbury's Statutes 178, as amended by subsequent annual Acts.

by the management committee, any person who is not an inmate of the institution may, with the permission of the master, visit an inmate of the institution (Art. 69). Subject to any such regulations, the master may grant an inmate of the institution temporary leave of absence (Art. 53). [119]

Punishment of Inmates.—The master has definite powers as to the punishment of inmates under Arts. 57, 59, 65 and 66 of the Public Assistance Order (*d*). Subject to any regulations made by the council he may punish a disorderly inmate, either by withholding from him, pending the further direction of the management committee, any privilege which he may have been allowed to enjoy, or by making certain alterations in his rations or in both of these ways (Art. 57). If any offence, whereby an inmate becomes refractory, is accompanied by certain specified circumstances of aggravation, the master may, without any direction of the management committee, immediately place the inmate in confinement for any time not exceeding twelve hours (Art. 59). Corporal punishment may not be inflicted, except upon a male child (not an infant) under fourteen and by the master or an officer specially authorised by him for the particular occasion, and in the presence of at least two officers, of whom the master must be one (Art. 65). The master must keep in a prescribed form a record of all offences and punishments and this book must be laid before the management committee and the house committee at each meeting (Art. 66). A master may not punish with corporal punishment any adult person or confine any such person for more than twenty-four hours, or such further time as may be necessary in order to have him brought before a justice of the peace (*e*). The master may arrest, without warrant, any inmate of the workhouse charged with any offence therein punishable on summary conviction and take him before a justice and has, for this purpose, all the powers and authority of a constable (*f*). [120]

Conduct of Master in Relation to Institution.—If a master orders any intoxicating liquor to be introduced into the workhouse, except for the domestic use of himself or of any officer of the workhouse or their respective families, or except by and under the written authority of the medical officer, or of a justice, or of the council, or in conformity with any regulations made by the Minister, he is liable on summary conviction to a fine not exceeding £20 (*g*). He is also liable on summary conviction to a fine not exceeding £20 for certain other offences relating to the introduction of intoxicating liquor, corporal punishment of adults and unlawful confinement or ill-treatment of inmates (*h*). The master must keep posted up, in a conspicuous place in a workhouse, copies of sects. 30 and 31 (*i*). [121]

Duties to Persons of Unsound Mind.—In circumstances prescribed by sect. 20 of the Lunacy Act, 1890 (*k*), a constable or relieving officer may remove a person alleged to be of unsound mind to the workhouse,

(*d*) 12 Halsbury's Statutes 1063, 1064.

(*e*) Poor Law Act, 1930, s. 159.

(*f*) *Ibid.*, s. 29; 12 Halsbury's Statutes 984.

(*g*) *Ibid.*, s. 31 (1).

(*h*) *Ibid.*, s. 31 (2).

(*i*) *Ibid.*, s. 32. *Ibid.*, s. 30, prohibits, under penalty, the introduction of intoxicating liquor into a workhouse without the master's order.

(*k*) 11 Halsbury's Statutes 26.

and it is the duty of the master of the workhouse to receive and detain such person unless he is of opinion that there is no proper accommodation in the workhouse. Detention under this provision may not exceed three days. Where the order is made by a justice under sect. 21, it is for the justice to decide whether there is proper accommodation in the workhouse, and the master has no discretion in the matter.

If any person, detained in a workhouse as a person of unsound mind under the Lunacy Act, 1890, escapes he may, without a fresh order, be retaken at any time within fourteen days after his escape by the master of a workhouse in which he was detained (*l*).

In any case in which a person of unsound mind, or alleged to be of unsound mind, is admitted to the institution, the master must send for the medical officer. He must act similarly if any inmate becomes of unsound mind (*m*).

He must report to the medical officer every case in which any restraint or compulsion has, in the absence of the medical officer, been used in the case of a person of unsound mind (Art. 168 (6)).

Within forty-eight hours he must notify the coroner of the death of any person of unsound mind, or alleged to be of unsound mind (Art. 168 (9)). [122]

Appointment of Matron.—At every institution the council must appoint a suitable person to hold the office of matron. The duties of matron are prescribed in detail by Art. 171. She must generally supervise and control the female staff and assist the master in the general management and superintendence of the institution. [123]

(*l*) Poor Law Act, 1930, s. 85.

(*m*) Public Assistance Order, 1930, Art. 168 (4); 12 Halsbury's Statutes 1080.

PUBLIC ASSISTANCE OFFICER

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See also titles :

CASE PAPER SYSTEM ;
GUARDIANS COMMITTEE ;
POOR LAW OFFICERS ;
PUBLIC ASSISTANCE ;

PUBLIC ASSISTANCE COMMITTEE ;
PUBLIC ASSISTANCE IN LONDON ;
RELIEVING OFFICER.

Preliminary.—The appointment of public assistance officers became necessary on the transfer of the functions of boards of guardians to the councils of counties and county boroughs under the L.G.A., 1929 (*a*).

(*a*) 10 Halsbury's Statutes 883.

The chief officer in each poor law union was known as the clerk to the guardians, whose duties had been prescribed by the General Consolidation Order, 1847. He was required to carry out the duties of clerk or secretary to the board of guardians and to conduct the board's correspondence. He was also the board's accountant as, although in practice it was usual for an accountancy assistant to be appointed, the clerk was responsible for the accounts of the board. He was the legal adviser to the guardians, except in cases where the advice of a solicitor was deemed necessary. He prepared written contracts to be entered into with the guardians, countersigned all payments made by the guardians, and generally performed the functions of the board's legal adviser, accountant, secretary and administrative officer. He had security of tenure in that he could only be removed from office by the local government board and latterly the Minister of Health. The central department looked to him to be informed on all matters relating to the poor law administration. [124]

Since the establishment of county councils and county borough councils it has been the practice for a senior officer to be appointed for each department of the council's activities. On the assumption by these councils of the responsibility of the poor law administration, it was deemed necessary to follow a similar practice with regard to the public assistance department. The Minister of Health held the view that the county and county borough treasurer and the county and county borough M.O.H. should be clearly specified as the principal advisers in their respective spheres of the public assistance committee as of all other committees of the council (*b*). It was felt, however, that some one person should be designated as public assistance officer, or under some similar title, to carry out the administrative poor law work and accordingly, under Art. 141 of the Public Assistance Order, 1930 (*c*), it was made obligatory on the council to appoint a public assistance officer to rank as a senior poor law officer, while the positions of the chief financial officer and the M.O.H. in relation to poor law functions were clearly established in Art. 165 (*d*).

The public assistance officer must work under the general direction and control of the clerk to the county council or town clerk, as the head of the council's administration, and the order specifically provides that the clerk may himself be the public assistance officer. In six counties and in twenty-one county boroughs the clerk has in fact been appointed public assistance officer with a chief assistant. In the remainder separate appointments have been made. Where this was done on the assumption by the council of its poor law functions the new officer was almost invariably a former officer of a board of guardians. [125]

Appointment of Public Assistance Officer.—The council must appoint a public assistance officer who may be the clerk to the council and may appoint one or more public assistance officers and as many assistant or deputy public assistance officers as the council may think fit (*e*). The general practice is for the council to appoint one officer as the public assistance officer to act as the chief adviser to the council on matters connected with public assistance administration. In some counties, officers known as local public assistance officers are appointed to act

(*b*) 11th Annual Report of the M. of H., 1929-1930, p. 181.

(*c*) 12 Halsbury's Statutes 1075.

(*d*) *Ibid.*, 1078.

(*e*) Public Assistance Order, 1930, Art. 141; 12 Halsbury's Statutes 1075.

as clerks to guardians committees, but in other areas the officers performing similar duties are termed assistant public assistance officers or clerks to guardians committees.

The arrangements for staffing guardians committees varies; and while some counties have appointed a local officer for the purpose or have retained part-time officers who were previously clerks to guardians, others have staffed them from the county headquarters where the public assistance officer himself acts as clerk to the various guardians committees, or this work is undertaken by one or more deputy or assistant public assistance officers. [126]

Control by Minister of Health.—The specific approval of the Minister is not required to individual appointments as public assistance officers, but as in the case of other senior poor law officers the name and remuneration of every public assistance officer must be reported to the Minister on his appointment (*f*). Following the security of tenure given to clerks to guardians, it was deemed advisable on the transfer of the functions to the council that public assistance officers and other senior poor law officers should be protected from unjustifiable dismissal by the council. Such officers can only be dismissed with the consent of the Minister (*g*). Similarly, if a public assistance officer is suspended from the performance of his duties, the fact of such suspension with a statement of the reasons thereof must be reported forthwith to the Minister, and if the Minister removes the suspension the officer must forthwith resume the performance of his duties (*h*). [127]

Qualifications.—No person may be appointed a public assistance officer or assistant or deputy public assistance officer who has not had previous experience as an officer in local government or poor law administration in an office the duties of which are similar to those of the office to which it is proposed to appoint him, or such other experience as the council, with the consent of the Minister, may prescribe (*i*). It is a usual practice to appoint a person who was formerly a public assistance officer in another area or who has held an appointment as an assistant or deputy public assistance officer. No examination qualification is prescribed (as in the case of a relieving officer, or an institution master), but in practice the possession of some examination qualification or professional diploma is considered desirable. [128]

Duties of Public Assistance Officer.—The duties of a public assistance officer are to advise the council on all matters relating to the administration of relief in its area and perform in regard thereto such duties as shall from time to time be assigned to him by the council (*k*). Some councils have entrusted other duties to the public assistance officer, such as acting as secretary to the committee of a hospital appropriated under the P.H.A. A number of councils have made the public assistance officer responsible for keeping the central register of public assistance. Others have made him responsible for investigating the circumstances of recipients of assistance from other departments of the council. A public assistance officer may be regarded as the social service officer of the council concerned with the administration

(*f*) Public Assistance Order, 1930, Art. 162; 12 Halsbury's Statutes 1077.

(*g*) *Ibid.*, Art. 157. See title POOR LAW OFFICERS.

(*h*) *Ibid.*, Art. 158.

(*i*) *Ibid.*, Art. 159.

(*k*) *Ibid.*, Art. 165 (3).

of assistance and discharging any duties relating thereto which are not the specific function of some other departmental officer such as the county M.O.H. or the financial officer. Subject to any views or instructions of the council or public assistance committee, he is responsible for the organisation of the department, but the precise method of organisation varies according to the size of the authority and the general policy of the council. [129]

In accordance with the general practice of local government administration, communications and instructions to subordinate officers should go through him and not direct from other officers of the council, except in regard to routine accountancy matters where, for instance, it is appropriate for the chief financial officer to issue instructions direct to relieving officers as to the operation of the imprest accounts or on internal audit matters. In some areas the public assistance officer is the responsible officer for instituting legal proceedings connected with poor law offences.

In some areas the public assistance officer acts as clerk to the public assistance committee and generally advises the committee on the discharge of all its functions, except in regard to any matters on which the advice of the town clerk, the M.O.H., or the chief financial officer is desired. It is, however, the more usual practice for the clerk to the county council, or the town clerk, or one of his assistants, to act as clerk to the committee, and for the public assistance officer to advise on all administrative matters affecting the department. This follows the usual practice of local authorities in connection with other departments.

The public assistance officer, or one of his assistants, usually acts as clerk to the various relief committees or sub-committees. [130]

In counties the public assistance officer advises the public assistance committee on the recommendations submitted by the various guardians committees. It is his duty to assist the public assistance committee in maintaining the uniformity of practice throughout the county. He is the co-ordinating officer of all the work of the committee and should be in constant and direct contact with all branches of the work, and with all principal officers engaged in administering institutional or outdoor relief. For this purpose he should visit the various parts of the county and attend meetings of the guardians committees periodically to keep in touch with local practice and conditions, though in areas smaller than county boroughs this is done by the local public assistance officer or a member of the staff.

Although relieving officers and institution masters have certain statutory duties (see these titles), the public assistance officer must, subject to these statutory duties, exercise a general supervision over the discharge of their duties. It is further necessary that the public assistance officer should work in close co-operation with the public health, education and finance departments of the council. [131]

PUBLIC AUTHORITIES PROTECTION ACT

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See also titles : ACTIONS BY AND AGAINST LOCAL AUTHORITIES ;
COSTS ;
EMPLOYEES, RESPONSIBILITY FOR ACTS OF.

Introduction.—There are many Acts of Parliament, both public and private, which contain provisions designed to protect persons exercising public powers or performing public duties against legal proceedings in respect of acts done by them in their public capacity. The protection ordinarily takes the form of prescribing a short limitation period, or of providing for the giving of notices before action brought, or of granting to a successful defendant preferential treatment as to costs. These Acts must now be read subject to the provisions of the Limitations of Actions and Costs Act, 1842 (*a*), and of the Public Authorities Protection Act, 1893 (*b*). The Act of 1842 amended all such protective provisions as are contained in Acts passed prior to August 10, 1842. The amendment extends to provisions relating to a limitation period (*c*); and to the giving of notices of action (*d*). The Act also effected a repeal of all such protective provisions in so far as they relate to costs (*e*). The Act of 1893 repealed all such protective provisions as are contained in public general Acts passed prior to January 1, 1894, in so far as such provisions relate to proceedings which come within the scope of the 1893 Act (*f*). In particular the Act of 1893 repealed all such protective provisions as are contained in 109 different Acts, or sections of Acts, specified in the Schedule thereto, including the relevant provisions of the Act of 1842. In view of the repealing effect of the 1893 Act it will generally be safe to assume that protection will exist, if it exists at all, under the provisions of that Act. If, however, there are protective provisions in an earlier Act which would (if not repealed

(*a*) 13 Halsbury's Statutes 115.

(*b*) *Ibid.*, 455.

(*c*) Limitations of Actions and Costs Act, 1842, s. 5; 13 Halsbury's Statutes 115.

(*d*) *Ibid.*, s. 4.

(*e*) *Ibid.*, s. 1.

(*f*) The Public Authorities Protection Act, 1893, s. 2; 13 Halsbury's Statutes 459. The repealing provisions expressly apply only to public Acts. Whether provisions contained in a prior private Act are impliedly repealed will depend upon the precise nature of the provisions; for the general principles applicable, see *Esquimalt Waterworks Co. v. Victoria City Corpn.*, [1907] A. C. 499; 42 Digest 768, 1954; *Sion College v. London Corpn.*, [1901] 1 K. B. 617; 38 Digest 475, 349.

by the Act of 1893) be available, it will be advisable to plead them for two reasons. First, although the protection of the Act of 1893 is expressed to be given to any person, the better opinion is that it extends only to public authorities (*g*), in which case the earlier Act may be available for a wider class of defendants than the later one. Secondly, the repealing provisions of the Act of 1893 extend only in so far as the repealed Acts relate to a "proceeding" to which the Act of 1893 applies. The earlier Act may touch proceedings not comprised within the later one and to that extent remain unrepealed. [132]

In general terms the Act of 1893 prohibits the bringing of proceedings in respect of something done in pursuance of a public duty after the lapse of six months after the act, neglect or default complained of. It also enables a successful defendant in any such proceedings to recover solicitor and client costs, and it provides that such a defendant shall be entitled to make and plead a tender of amends.

In 1937 the Law Revision Committee suggested two major amendments of the Act of 1893, viz. that the period of limitation should be extended from six to twelve months, and that the time should run from the date of the accrual of the cause of action. Legislation to effect such amendments has not yet been introduced. [133]

Proceedings in respect of which protection is afforded.—The protection of the Act is available in respect of "any action, prosecution or other proceeding." No definition of the word "proceeding" is contained in the Act (*h*). It is, however, clear that any action in which any equitable or legal relief is sought against a person may come within the scope of the Act, and will do so provided the other conditions mentioned below are fulfilled. Thus the Act has been held to apply to a claim for an injunction (*i*), or for a declaration (*k*); to *quia timet* actions for threatened wrongs (*l*); to actions for infringement of patent (*m*); and to actions brought by an infant (*n*). [134]

The Act does not apply to proceedings by way of *certiorari* or *mandamus* (*o*); or *quo warranto* (*p*); or (it seems) prohibition (*q*). Protection is, however, afforded in the case of a claim for damages in *mandamus* proceedings, and, for the purpose of calculating the prescribed period, the date of the notice for the rule *nisi* is the critical date (*r*). [135]

(*g*) See p. 59, *post*.

(*h*) It has been held that the word as it is used in the Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102), s. 106 (repealed), means some proceeding of a hostile character which has been initiated by a writ or process; see *Delany v. Metropolitan Board of Works* (1867), L. R. 2 C. P. 532; 38 Digest 122, 898.

(*i*) *Harrop v. Ossett Corpn.*, [1898] 1 Ch. 525; 38 Digest 120, 863; *Fielden v. Morley Corpn.*, [1900] A. C. 133; 38 Digest 120, 864.

(*k*) *Grand Junction Waterworks Co. v. Hampton U.D.C.* (1899), 63 J. P. 503; 38 Digest 120, 866.

(*l*) *Graigola Merthyr Co. v. Swansea Corpn.*, [1929] A. C. 344; 38 Digest 120, 867, and Digest (Supp.).

(*m*) *Chamberlain and Hookham, Ltd. v. Bradford Corpn.* (1900), 83 L. T. 518; 38 Digest 123, 902.

(*n*) *Jacobs v. L.C.C.*, [1935] 1 K. B. 67; Digest (Supp.).

(*o*) *R. v. L.C.C., Ex p. Swan and Edgar* (1927), *Ltd.* (1929), 45 T. L. R. 512; Digest (Supp.); *R. v. Hertford Union, Ex p. Pollard* (1914), 111 L. T. 716; 38 Digest 121, 884; *R. v. Port of London Authority, Ex p. Kynoch, Ltd.*, [1919] 1 K. B. 176; 38 Digest 121, 885.

(*p*) *R. v. Carter* (1904), 68 J. P. 466, D. C.; 38 Digest 121, 887.

(*q*) *R. v. Kensington Income Tax Comrs.*, [1913] 3 K. B. 870; 38 Digest 121, 888.

(*r*) *R. v. Marshland Smeeth and Fen District Comrs.*, [1920] 1 K. B. 155; 38 Digest 121, 886.

To come within the Act, the action, prosecution or proceeding must be commenced against some person as a defendant, and it must be one in which some kind of a judgment can be obtained against the defendant. So where an auditor of the Local Government Board had made surcharges and the borough council applied to the court to have the surcharge quashed, it was held that the application was not a proceeding for the purposes of the Act (s). Admiralty actions *in rem* (t), proceedings for compensation under the Lands Clauses Consolidation Act, 1845 (u), and claims for compensation or indemnity under the Workmen's Compensation Act, 1925 (a), are outside the purview of the Act. [136]

The protection of the Act is intended for acts of tortious nature, and is not available for breaches of contract or implied contract. Thus in *Milford Docks Co. v. Milford Haven U.D.C.* (b) a landslip occurred upon a highway repairable by the inhabitants at large as a result of which part of the road fell upon adjoining land. The landowner offered to execute the necessary repairs if instructed to do so by the highway authority, the question of liability to be dealt with afterwards. The authority replied requesting the owner to do the work. The work was accordingly completed and after the expiration of the statutory period an action was brought to recover the costs. It was held that the action was brought on the contract, and that the Act did not apply (c). The reason for this rule is that the carrying out of individual contracts is not *prima facie* the performance of a public duty or authority even though the contract is entered into in pursuance of statutory powers (d). Actions for money had and received by unlawful exaction in purported pursuance of statutory powers are within the Act (e).

The protection afforded by the Act does not apply to any proceedings by any department of the Government against any local authority or officer of a local authority (f). [137]

Acts or Omissions in respect of which Protection is given.—The statutory protection is given in respect of any act done in pursuance or execution or intended execution of any Act of Parliament or of any public duty or authority or any neglect or default in the execution of any such Act, duty or authority. An act which is done, without any negligence or default, in execution of some Act of Parliament is clearly justifiable; and as far as such an act is concerned the protection by limitation is strictly unnecessary. The protection, however, extends

(s) *Roberts v. Battersea Metropolitan Borough* (1914), 110 L. T. 566; 38 Digest 119, 861.

(t) *The Longford* (1889), 14 P. D. 34; 38 Digest 122, 893; *The Burns*, [1907] P. 137; 38 Digest 122, 894.

(u) *Delany v. Metropolitan Board of Works* (1867), L. R. 2 C. P. 532; affirmed L. R. 3 C. P. 111; 38 Digest 122, 893.

(a) *Fry v. Cheltenham Corp'n.* (1911), 81 L. J. (K. B.) 41; 38 Digest 123, 910; *Tuckwood v. Rotherham Corp'n.*, [1921] 1 K. B. 526; 38 Digest 123, 911.

(b) (1901), 65 J. P. 483; 38 Digest 109, 780.

(c) See also *Clarke v. Lewisham Borough Council* (1902), 67 J. P. 195; 38 Digest 109, 781 (action for damages for wrongful dismissal); *Sharpington v. Fulham Guardians*, [1904] 2 Ch. 449; 38 Digest 109, 783 (arbitration for damages for breach of a building agreement).

(d) See, further, on the point, *post*, p. 57.

(e) *Midland Rail. Co. v. Wiltshire Local Board* (1883), 11 Q. B. D. 788; 38 Digest 123, 905 (having charges alleged to have been overpaid); *Waterhouse v. Keen* (1825), 4 B. & C. 200; 38 Digest 123, 908 (tolls alleged to have been overpaid).

(f) See the last paragraph of s. 1 of the Public Authorities Protection Act, 1893 (13 Halsbury's Statutes 456).

to acts done in "intended execution" of an Act of Parliament; and the actor will accordingly be protected where his act is *ultra vires* if he can show that at the material time he intended to execute an Act of Parliament. It would seem that the motive of the actor is important. If he did the act complained of for his own benefit he cannot be said to have done it in intended execution of an Act of Parliament. Again, the actor must have a *bona fide* belief that he was authorised by the Act of Parliament to do what he did. In the absence of such a belief he could not succeed in establishing the necessary intention. If the actor had such a belief, it is immaterial that he had no reasonable grounds for entertaining the belief (g). [138]

Nature of the duty in respect of which protection arises.—The protection is available only where the act complained of is done in pursuance or execution or intended execution of some Act of Parliament or of some public duty or authority. The act must be one which is either an act in direct execution of a statute (in the sense that the doing of the act is expressly directed or authorised by a statute), or in the discharge of a public duty, or in the exercise of a public authority. In this connection a public duty means a duty owed to all the public alike, and a public authority means an authority exercised impartially with regard to all the public (h). Where a power is conferred or a duty is imposed in wide general terms the authority exercising the power or performing the duty will no doubt be brought into legal relationships with individual persons. An act done by reason of such a relationship is regarded as having been done incidentally to the exercise of the power, or the discharge of the duty; and, although the power may be a public authority or the duty a public duty, the incidental act is not protected. Thus in *Sharpington v. Fulham Guardians* (i) the defendants entered into a contract with the plaintiff, a builder, for certain works required by them for the purpose of carrying out their public duties. The work was completed in May 1901 and paid for. The plaintiff then claimed an additional sum for damages for loss alleged to have been caused by negligence and frequent changes of plans on the part of the defendants. The contract contained an arbitration clause and the claim was referred to arbitration in November, 1902. The defendants contended that the claim was for an act or default in the execution of a public duty, and that the proceedings were out of time. It was held that the plaintiff's claim was in respect of a private duty arising out of contract and that the Public Authorities Protection Act, 1893, did

(g) See *Newell v. Starkie* (1919), 89 L. J. (P. C.) 1; 38 Digest 119, 854; *G. Scammell and Nephew, Ltd. v. Hurley*, [1929] 1 K. B. 419; Digest (Supp.); *Betts v. Metropolitan Police District Receiver*, [1932] 2 K. B. 595; Digest (Supp.). The following cases under the earlier Acts may be referred to. As to the defendant acting for his own benefit *Irving v. Wilson* (1791), 4 Term Rep. 485; 38 Digest 119, 855; *Morgan v. Palmer* (1824), 2 B. & C. 729; 38 Digest 119, 857; *Lawton v. Miller* (1818), (unreported), cited in 6 B. & C. at p. 355). See also the Scottish case *M'Ternan v. Bennett* (1898), 1 F. (Ct. of Sess.) 333; 38 Digest 118, 853 *ii*. As to the necessity for a *bona fide* belief, see *Wedge v. Berkeley* (1837), 6 Ad. & El. 663; 38 Digest 114, 814; *Jones v. Gooday* (1842), 9 M. & W. 736; 38 Digest 116, 833; *Horn v. Thornborough* (1849), 3 Exch. 846; 43 Digest 457, 832; *Gosden v. Elphick and Bennett* (1849), 4 Exch. 445; 38 Digest 114, 816; *Read v. Coker* (1853), 13 C. B. 850; 43 Digest 432 578; *Chamberlain v. King* (1871), L. R. 6 C. P. 474; see also the Privy Council decision, *Newell v. Starkie* (1919), 89 L. J. (P. C.) 1; 38 Digest 119, 854.

(h) *Bradford Corpn. v. Myers*, [1916] 1 A. C. 242, *per* Lord BUCKMASTER at p. 247; 38 Digest 110, 784.

(i) [1904] 2 Ch. 449; 38 Digest 109, 783.

not apply (*k*). In *Bradford Corporation v. Myers* (*l*) the defendants were authorised by Act of Parliament to carry on the undertaking of a gas company and were bound to supply gas to the inhabitants of a district. They were also empowered to sell the coke produced in the manufacture of the gas. They contracted to sell and deliver a ton of coke to the plaintiff. Their agent negligently shot the coke through the plaintiff's window. More than six months later the plaintiff began an action for negligence, and the defendants claimed that the action was barred. It was held that the statute afforded no defence. In the Divisional Court the matter was dealt with on the footing that the statute did not apply because the action was for breach of contract and not for tort. The House of Lords (*m*), however, appear to have laid down that the real test is whether the act complained of has been done in direct execution of the public authority or duty or whether it was merely incidental thereto (*n*). [139]

The above case may be contrasted with *Edwards v. Metropolitan Water Board* (*o*). The defendants were under a statutory duty to supply water to the inhabitants of an area and to maintain pipes necessary for conveying the water. They had a number of pumping, filtering and storage depots which had to be supplied with consumable stores, and materials for repairing and extending their main pipes. They used lorries to take stores to their depots and to bring back empty receptacles which had contained oil and other materials. In September 1919 a lorry was sent out to convey cast-iron pipes from a control depot to a district depot. On the return journey the driver negligently ran over and injured the plaintiff. In June, 1920, the plaintiff issued a writ claiming damages for the injury. It was held that no distinction could be drawn between the outward journey and the return journey of the lorry, that it was all one journey which had been undertaken directly in pursuance of the defendants' statutory duty, and that the Act accordingly applied (*p*).

It is doubtful how far the duty to respect the proprietary rights of others can be said to be a public duty. Indeed there is some authority

(*k*) See also *National Telephone Co. v. Kingston-upon-Hull Corpn.* (1903), 89 L. T. 291; 38 Digest 109, 782 (notice given to determine contract); *Clarke v. Lewisham Borough Council* (1902), 67 J. P. 195; 38 Digest 109, 781 (action for damages for wrongful dismissal); *Milford Docks Co. v. Milford Haven U.D.C.* (1901), 65 J. P. 483; 38 Digest 109, 780; *Palmer v. Grand Junction Rail. Co.* (1839), 4 M. & W. 749; 38 Digest 110, 789.

(*l*) [1916] 1 A. C. 242; 38 Digest 110, 784.

(*m*) [1916] 1 A. C. at p. 246.

(*n*) Another test was suggested by Lord SHAW in *Bradford Corpn. v. Myers*, *supra*, at pp. 263, 264, in the following terms: "If there be a duty arising from statute or the exercise of a public function, there is a correlative right similarly arising. A municipal tramway car depends for its existence and conduct on, say, a private and many public Acts and the corpn. in running it is performing a public duty. When a citizen boards such a car, in one sense he makes, by paying his fare, a contract, but the boarding of the car, the payment of the fare and the charging of the corpn. with the responsibility for safe carriage are all matters of rights on the part of the passenger, a public right of carriage which he shares with his fellow citizens correlative to the public duty which the corporation owes to all."

(*o*) [1922] 1 K. B. 291; 38 Digest 111, 795.

(*p*) See also *McManus v. Bowes*, [1938] 1 K. B. 98; [1937] 3 All E. R. 227 Digest (Supp.) (plaintiff who was an assistant medical officer at a county mental hospital was dismissed by a joint visiting committee. Held that the engaging and dismissing was in direct execution of the committee's statutory powers and that the Act applied). This case should be contrasted with *Clarke v. Lewisham Borough Council*, *ante*, p. 56.

for the proposition that the protection does not apply to actions for the recovery of land (g). [140]

Persons entitled to the Protection.—By the express terms of the Act the protection is afforded whenever proceedings are commenced against “any person.” Notwithstanding the generality of this phrase the better opinion is that the Act applies only to public authorities and those who are acting under the direct mandate of a public authority (r). This opinion is based upon the short title of the Act and upon the fact that its long title speaks of “persons acting in execution of statutory and other public duties.” The proper test to apply for the purpose of ascertaining whether a body is a public authority or not is to inquire as to whether it is in a position to make a profit for shareholders or the like out of the performance of the duty in pursuance of which the act complained of has been done (s). Accordingly it has been held (s) that the Act has no application to a commercial company incorporated for the purpose of constructing and maintaining a pier and harbour. It is immaterial that the body has been incorporated by a private Act of Parliament which recites that the authorised undertaking is to be established for the benefit of the public, or which imposes upon the undertakers the duty in the performance of which the act in question is done. [141]

Officers and servants of a public authority are protected, provided the act or default would have been protected if it had been done or committed by the authority themselves. Moreover, a private individual may be protected by the provisions of one or other of the Acts in so far as it is left unrepealed by the Act of 1893 (t). No protection is afforded to an independent contractor doing, under contract and for his own profit, work which a public authority have been authorised to do (u). [142]

The Act applies to Government officers, civil or military. Thus, the protection has been granted to the high bailiff of a county court (a), to a police constable (b); to the officer in charge of one of His Majesty's ships (c); and to an inspector of schools (d). It seems that the Act also applies to members of the judiciary (e). [143]

Period of Limitation.—The Act provides that the action, prosecution or proceeding shall not lie unless it is commenced within six months next after the act, neglect or default complained of, “or, in the case of a continuance of injury or damage within six months next after the ceasing thereof” (f). The words “continuance of injury or damage” have been construed as meaning not merely a continuance of the injury

(g) See *Cross v. Rix* (1912), 77 J. P. 84; 38 Digest 121, 876; *Foot v. Margate Corpn.* (1883), 11 Q. B. D. 299; 38 Digest 121, 875, 877; cf. *Offin v. Rochford R.D.C.*, [1906] 1 Ch. 342; 38 Digest 107, 774, where it was held that the protection extends to trespass by a local authority which is asserting that the land is part of a highway.

(r) See *Lyles v. Southend-on-Sea Corpn.*, [1905] 2 K. B. 1; 38 Digest 102, 733; *A.-G. v. Margate Pier and Harbour Co. of Proprietors*, [1900] 1 Ch. 749; 38 Digest 102, 734. See also *The Johannesburg*, *infra*.

(s) *The Johannesburg*, [1907] P. 65; 38 Digest 103, 738.

(t) As to this, see p. 55, *ante*.

(u) *Tilling (T.), Ltd. v. Dick Kerr & Co.*, [1905] 1 K. B. 562; 38 Digest 103, 737.

(a) *Turley v. Daw* (1906), 94 L. T. 216; 38 Digest 127, 931.

(b) *M'Ternan v. Bennett* (1898), 1 F. (Ct. of Sess.) 333; 38 Digest 118, 853 ii.

(c) *The Danube II.*, [1921] P. 183; 38 Digest 103, 741.

(d) *Newell v. Starkie* (1919), 89 L. J. (P. C.) 1; 38 Digest 119, 854.

(e) *Weller v. Toke* (1808), 9 East, 364; 38 Digest 118, 849.

(f) Public Authorities Protection Act, 1893, s. 1 (a); 13 Halsbury's Statutes 456.

or damage caused by the act complained of, but a continuance of the act itself. So where a plaintiff who had been injured by the negligent act of the defendant council brought an action more than six months after the act of negligence at a time when she was still suffering from the injuries she had sustained, it was held that her claim was barred (g). [144]

Cases in which a wrongful act or default has caused damage of a continuing nature fall into two classes. First, those, such as the case of personal injury mentioned above, where there is no duty laid upon the public authority to cure the mischief which has been caused. In cases of this kind the period runs from the date of the act which began the damage. And, secondly, those where there is a duty (usually a statutory duty) to repair or remedy the damage and to prevent its further occurrence. In cases of the latter class, the breach of duty or wrongful act continues just so long as the damage continues and the statutory period does not begin to run until the damage ceases. Thus the duty to maintain support and keep in repair a road (h), and the duty to maintain the support of gas pipes (i), have been held to be duties of the kind under consideration, so that in each case it was held that, not only the original interference with the support, but also the subsequent continuing neglect to remedy such interference was a wrongful act, and that the period did not begin to run until the subsequent neglect was cured by remedying the damage. Where in this sense there is a continuing cause of action within the meaning of the Act, and an action is brought within six months after the cessation of the damage the plaintiff is not limited to damage which he has incurred within the six months period. He is entitled to recover up to the period of six years limited by the Statute of Limitations (k). [145]

Tender of Amends.—The general rule is that the defence of tender is available only in the case of a liquidated claim (l). In cases to which the Act of 1893 applies, where the proceeding in question is an action for unliquidated damages, tender of amends before action may (in lieu of or in addition to any other plea) be pleaded. If the action is commenced after the tender and the plaintiff does not recover more than the amount tendered, he will not recover any costs, and the defendant will be entitled to costs of the action as between solicitor and client. This rule does not affect costs on any injunction in the action (m). The sum alleged to have been tendered should be brought into court (n). The plaintiff should before commencing proceedings give the defendant a sufficient opportunity of tendering amends. If, in the opinion of the court, this has not been done, the court may award to the defendant

(g) *Carey v. Bermondsey Metropolitan Borough* (1903), 67 J. P. 447; 38 Digest 130, 953; *Freeborn v. Leeming*, [1926] 1 K. B. 160; 38 Digest 130, 955 (a similar case where the injury sustained was proved to be permanent). See also *Copley v. Leeds Corpn.* (1904), 68 J. P. Jo. 196; *Rawlins v. Gillingham Corpn.* (1932), 96 J. P. 153; Digest (Supp.).

(h) *Hart v. St. Marylebone Borough Council* (1912), 76 J. P. 257; 38 Digest 128, 945; *Boynton v. Ancholme Drainage and Navigation Comrs.*, [1921] 2 K. B. 213; 38 Digest 37, 221.

(i) *Huyton and Roby Gas Co. v. Liverpool Corpn.*, [1926] 1 K. B. 146; 38 Digest 129, 949.

(k) *Harrington (Earl of) v. Derby Corpn.*, [1905] 1 Ch. 205; 38 Digest 127, 934.

(l) *Davys v. Richardson* (1888), 21 Q. B. D. 202; 12 Digest 319, 2639.

(m) The Public Authorities Protection Act, 1893, s. 1 (c); 13 Halsbury's Statutes 456.

(n) This is the general rule with regard to pleas of tender; R. S. C., Ord. XXII., r. 1 (1).

costs as between solicitor and client (*o*). Where after action brought, the defendant pays money into court in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum paid in, the plaintiff will not recover any costs incurred after the payment in and the defendant will be entitled to costs as between solicitor and client as from the time of the payment in (*p*). Here again the rule does not affect the costs of any injunction in the action. [146]

Pleading and Waiver.—The defence that the act, neglect or default complained of is protected by the Act must be specifically pleaded, otherwise it cannot be raised at the trial of the action. It has been held (*q*) that the defendant may be estopped from setting up the defence. There seems to be no reason why the defence should not be waived by agreement between the parties (*r*). But where negotiations took place between the parties for the settlement of the plaintiff's claim which led the plaintiff to think that the defendants would admit liability, and, after the negotiations had broken down, the plaintiff began proceedings more than six months after the injury, it was held that the defendants had not waived the statute and were not estopped from pleading it (*s*). As to costs of proceedings to which the Act applies, see title Costs, Vol. IV., p. 114. [147]

London.—The Public Authorities Protection Act, 1893, applies to London public authorities. [148]

(*o*) The Public Authorities Protection Act, 1893, s. 1 (*d*) ; 13 Halsbury's Statutes 456.

(*p*) *Ibid.*, s. 1 (*c*). The provisions of this section appear to deprive the court of its discretion under R. S. C., Ord. LXV., r. 1.

(*q*) In a Scottish case *Paterson v. Glasgow Corpn.* (1908), 46 Sc. L. R. 10.

(*r*) The promise to waive would require consideration.

(*s*) *Hewlett v. L.C.C.* (1908), 24 T. L. R. 331 ; 38 Digest 136, 997.

PUBLIC BATHING

See BATHING.

PUBLIC BATHS

See BATHS AND WASHHOUSES.

PUBLIC BUILDINGS, SAFETY PROVISIONS OF

See SAFETY PROVISIONS OF BUILDINGS AND STANDS.

PUBLIC CLOCKS .

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Urban Authorities.—Urban authorities are empowered by sect. 165 of the P.H.A., 1875 (*a*), to provide such public clocks as they consider necessary. They may cause them to be fixed on or against any public building, or with the consent of the owner or occupier on or against any private building, the situation of which is convenient for the purpose. They may furthermore cause the dials of such clocks to be lighted at night and may also from time to time alter, and remove any clocks so set up to any other like situation they may consider expedient. By sect. 46 of the P.H.A. Amendment Act, 1890 (*b*) (where Part III. of that Act has been adopted (*c*)), this power has been extended so as to enable any urban authority to pay the reasonable cost of repairing, maintaining, winding up and lighting any public clock within their district although the same is not vested in them. Public clocks may therefore be erected by urban authorities on such public buildings as town halls, public libraries and washhouses; but as there is some doubt as to whether a church is a public building, it is probable that a faculty would be necessary for the erection of a church clock by a local authority. Apparently, while the power given by sect. 165 of the 1875 Act authorises the erection of a necessary receptacle or fitment for a public clock, it does not give authority for the establishment of ornamental and costly clock towers. [149]

Rural Authorities.—The powers with regard to, *inter alia*, the provision, etc., of public clocks under sect. 165 of the P.H.A., 1875, and the repair and winding of the same under sect. 46 of the 1890 Act, were extended to all rural district councils by the Rural District Councils (Urban Powers) Order, 1931 (*d*), and the consent of the county council is necessary if the clock will overhang a county road. [150]

Parishes.—Power was given by sect. 8 (1) (h) of the L.G.A., 1894, for a parish council to accept and hold gifts of real or personal property for the benefit of the inhabitants of the parish, and by sect. 8 (1) (i), (k), to execute any works (including works of maintenance or improvement) in connection with the same and contribute towards the expense. This power enabled a parish council to accept, hold and contribute towards the expense of a public clock. The above sub-section, however, was repealed by the L.G.A., 1933. Sect. 268 (*e*) of that Act empowers

(*a*) 13 Halsbury's Statutes 694.

(*b*) *Ibid.*, 841.

(*c*) As to which see s. 3 of that Act; 13 Halsbury's Statutes 824, and title ADOPTIVE ACTS.

(*d*) S.R. & O., 1931, No. 580; 24 Halsbury's Statutes 262.

(*e*) 26 Halsbury's Statutes 449.

a local authority to accept gifts of property and execute works connected therewith; and as, by the definition section of the 1933 Act, "local authority" includes the council of a rural parish, sect. 268 would appear to give a parish council the power to accept the gift of a public clock and maintain it. [151]

London.—Sect. 65 of the L.C.C. (General Powers) Act, 1903 (f), empowers metropolitan borough councils to provide and maintain and light clocks on their own buildings and, with the consent of the owner or occupier, on or against any other building, and to fix and maintain and light any such clock or any other clock within the borough although such other clock is not vested in them. [152]

(f) 11 Halsbury's Statutes 1253.

PUBLIC CONTROL OFFICER

The designation "public control officer" is not known to the law. Many years ago, the L.C.C. invented the name "Public Control Department" for that branch of their administrative organisation through which miscellaneous statutory duties are performed. Later, the county councils of Middlesex and Surrey set up similar departments under the same name. Other local authorities have placed under the direction of a chief inspector various duties akin to those discharged by the public control departments of the three councils named, without using the phrase "public control."

There are variations among the duties allotted to public control officers, but the following services seem to be common to all in London, Middlesex and Surrey: Shops Acts, Weights and Measures Acts, Coal Bye-laws, Employment Agencies (private Acts and Bye-laws), Theatrical Employers' Registration Acts, Explosives Act.

Other statutes and services similarly administered, in one or more than one county, by the public control department (whatever its official style) are: Food and Drugs (Adulteration) Act, with the statutes and regulations enforced by Food and Drugs Authorities, Pharmacy and Poisons Act, Merchandise Marks Act and Orders, Gas-meter Testing and Gas Regulation Acts, Fertilisers and Feeding Stuffs Act, Diseases of Animals Acts, Performing Animals Act, Destructive Insects and Pests Acts, Music and Dancing, Cinematographs, Local Taxation Licences, Coroners, Fabrics (Misdescription) Act, Rats and Mice (Destruction) Act, Petroleum Acts, Celluloid, Road Traffic Act, 1930 (sect. 27), Smoke Nuisance. [153]

Many of these Acts and regulations are penal enactments, enforceable in courts of summary jurisdiction at the instance of local authorities and their officers. Consequently, one of the principal duties of a public control officer is to organise the work of the inspectors appointed by his authority and to present to his committee reports on the infringements discovered by the inspector, with a view to securing uniformity of practice. The public control officer may, or may not, be entrusted by his authority with power to decide on the institution of legal pro-

ceedings. That is a matter for the discretion of the local authority. Similarly, the authority decides whether it is desirable that their public control officer should have a legal qualification, or any other special qualification, such as that of an inspector of weights and measures. As the appointment of a public control officer is a matter of administrative convenience and is not necessary under any statute, local authorities have full powers to decide how much, or how little, responsibility they will entrust to any such officer, subject always to there being no derogation from the duties which must be carried out by such officers as the clerk and the M.O.H. of the authority. [154]

PUBLIC CONVEYANCES

See OMNIBUSES OF LOCAL AUTHORITIES; PUBLIC SERVICE VEHICLES;
TRAFFIC COMMISSIONERS; TRAMWAYS.

PUBLIC ELEMENTARY SCHOOLS

See ELEMENTARY EDUCATION.

PUBLIC HEALTH

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INTRODUCTION

The public health service of the country has been created almost entirely during the past ninety years. Its sources are fourfold. First, a desire to protect the population from the succession of epidemics of cholera and typhus which were ravaging the country in the middle of the last century. Secondly, the conclusions reached in a report on the sanitary condition of the labouring population of Great Britain in 1842, published by the Poor Law Commissioners, which led to a desire to ameliorate the squalor and misery under which the poor lived, by means of the removal of nuisances, and the improvement of scavenging, drainage, water supply and housing. Thirdly, a desire

to attain a higher standard of national efficiency, particularly from an economic point of view. Fourthly, the birth of the "medical instinct" which prompted men to undertake research into the causes and prevention of the communicable diseases.

The P.H.A., 1848 (a), the forerunner of many enactments dealing with public health, established a central authority for health matters—the General Board of Health. The Board consisted of two peers and a barrister (all non-medical men), and had power to form local sanitary districts under local boards of health. This power was to be exercised compulsorily where the death rate was more than 23 per 1,000 in any district, and voluntarily elsewhere on petition from the ratepayers. The General Board dealt with schemes promoted by the local boards under the Act of 1848, and took any necessary measures during epidemics. Friction arose between the General Board and the local boards, who resented the interference of a Government department in local affairs; and the General Board was abolished in 1858. [155]

Several Acts of Parliament were introduced between 1848 and 1874 to deal with urgent public health problems, and though the General Board of Health disappeared ten years after its inception the local boards remained. Since that time, as local government has developed in this country, the safeguarding of the public health has been one of the principal duties of local authorities.

The Local Government Board was established in 1871. It had the care of the public health as only one duty among several, and for many years it was essentially a non-medical organisation. Later, however, the medical department, which was at first feebly constituted, greatly stimulated the advance of sanitary science, despite considerable limitation of its activities. [156]

With the consolidation of all the sanitary laws in the great P.H.A. of 1875 (b), came the formation of a network of sanitary authorities, urban and rural, throughout the country. The newly formed sanitary authorities, and the additional officers appointed, continued and extended the efforts of those already at work. An increased influence and prestige was conferred upon authorities and officers: they became a "public health service."

The services provided under the P.H.A., 1875, and subsequent amending legislation were, broadly speaking, environmental services, such as sewerage, drainage and sanitation, the prevention of river pollution, the inspection of premises for nuisances, the removal of cases of infectious disease to hospitals, the provision of public water supplies, and the securing of a wholesome food supply. Provision was also made for social amenities such as public baths, wash-houses and parks and open spaces. Morbidity and mortality rates were reduced, and the incidence and severity of the dirt diseases diminished as a result of the operation by local authorities of the legal powers granted to them. As time went on, the conception of "public health" widened and after the passing of the 1875 Act there appeared, *inter alia*, the P.H. (Water) Act, 1878 (c), the P.H. (Interments) Act, 1879 (d), a series of measures dealing with various types of dwellings—the Canal Boats Act, 1877 (e), the Housing of the Working Classes Act, 1885 (f), the P.H. (Fruit Pickers Lodgings) Act, 1882 (g)—and many others. [157]

(a) 11 & 12 Vict. c. 63.

(c) 41 & 42 Vict. c. 25.

(e) *Ibid.*, 788.

(g) *Ibid.*, 797.

(b) 13 Halsbury's Statutes 623.

(d) 13 Halsbury's Statutes 796.

(f) *Ibid.*, 808.

Though not mainly a health measure, the L.G.A., 1888 (*h*), is a milestone in public health legislation, for it contained a provision setting out the qualifications to be held by medical officers of health. It forbade any person other than the holder of a particular post or of special diplomas to act as M.O.H. of any county or district with a population of 50,000 or more. The "Inspector of Nuisances" (later known as the "Sanitary Inspector") was not required, except in London, to possess any particular qualifications until 1922.

By 1890 the public health provisions in regard to sanitation were substantially complete and in good working order. Public health organisations were being regarded by the people as part of the communal services, but equally important factors in the improvement were the increase in educational work, particularly that of the Royal Sanitary Institute, and the impetus given to preventive medicine, as distinguished from environmental sanitation, by the International Congress of Hygiene and Demography held in London in 1891, which attracted specialists in hygiene and preventive medicine from all over the world. [158]

The recognition of the importance of preventive medicine had a great bearing on subsequent legislation and public health practice. Further control over infectious disease was obtained by the P.H.As. (Amendment) Act, 1907 (*i*); and the importance of the Housing, Town Planning, etc., Act, 1909 (*k*), and the P.H. (Regulations as to Food) Act, 1907 (*l*), is to be noted. An improvement in so far as mothers and infants were concerned was provided by the Midwives Act, 1902 (*m*), which attempted to ensure better and safer midwifery, and by the Notification of Births Act, 1907 (*n*). An attempt was being made to bring the mother and her baby into touch with women trained and skilled in infant management and hygiene. The Education (Administrative Provisions) Act, 1907 (*o*), established the medical inspection of children in elementary schools. The National Insurance Act, 1911 (*p*), provided a State medical service with sickness benefits for insured persons, and these benefits have been expanded by subsequent amending legislation. The war of 1914-18 gave another impetus to the health work of local authorities, and preventive medicine grew rapidly in subsequent years.

The following is a general review of the progress of a few of the essential elements of the public health organisation. [159]

MATERNITY AND CHILD WELFARE

This was one of the earliest services to be introduced in the field of preventive medicine. From 1904 to 1914 the work was conducted entirely by voluntary bodies, but from 1914 onwards the Government gave grants in aid of this service, and gradually local authorities assumed more and more control. In 1936 England and Wales, with an estimated population of 40,839,000, had 3,051 infant welfare centres, 1,568 ante-natal clinics, and 2,088 women devoting the whole, and 1,027 devoting part, of their time to health visiting in the home. In addition, there are now institutions for difficult confinements or for

(*h*) 51 & 52 Vict. c. 41; 10 Halsbury's Statutes 686.

(*i*) 13 Halsbury's Statutes 911.

(*k*) 9 Edw. 7, c. 44.

(*l*) 8 Halsbury's Statutes 862.

(*m*) 11 Halsbury's Statutes 729.

(*n*) 15 Halsbury's Statutes 765.

(*o*) 7 Halsbury's Statutes 126.

(*p*) 20 Halsbury's Statutes 465.

women who cannot with safety be confined at home, day nurseries, homes for the unmarried mother and her child, special arrangements for home nursing of various diseases of children, free milk and dinners for expectant and nursing mothers, special dental treatment, convalescent homes, and home helps during the lying-in period. The results achieved are worth recording. In 1900 the infant death rate for England and Wales was 154, and for London 167. In 1936 the figure for England and Wales was 59, and for London 66. This is a remarkable reduction, but it must also be realised that the decreased death rate has meant a decreased invalidity rate, and that fewer children are handicapped by disease and deformity to-day than at the beginning of the century.

The figures of maternal mortality, however, are not so easy to interpret. The maternal mortality rate has shown no decline in the last twenty years. Rates of maternal mortality depend very greatly on the adequacy of the maternity services of a local authority. At the same time it must be pointed out that some allowance must be made for individual differences amongst doctors in assigning the cause of death. An inquiry by the Maternal Mortality Committee appointed by the M. of H. to investigate deaths associated with pregnancy should serve to discriminate more precisely between deaths due to complications associated directly with pregnancy and deaths due to intercurrent illnesses. Local authorities are alive to this serious problem, and it is hoped that the Midwives Act, 1936 (*q*), which deals with the provision of skilled, salaried midwives by local authorities, will help to lessen the number of those deaths of mothers which are preventable.

The Maternity and Child Welfare Act, 1918 (*r*), made it compulsory for a local authority which is a welfare authority to establish a maternity and child welfare committee, of which one-third of the members might be co-opted, and two members of which had to be women. The M.O.H. is the officer chiefly responsible for the maternity and child welfare arrangements within the district of a welfare authority. His work is often wholly supervisory, the detail work being carried out by qualified assistant medical officers, male or female, whole-time or part-time, and by health visitors. The work is carried on in maternity and child welfare centres, which include maternity or ante-natal centres and infant welfare centres, usually organised in conjunction with each other. [160]

The main function of the maternity or ante-natal centre is to advise expectant mothers primarily in regard to conditions directly connected with pregnancy, but also in respect of general ailments which affect their physical welfare. Thus the work of the centre is largely educational and preventive. It is usually carried out under the supervision of a medical officer who has had special experience in obstetrics and gynaecology. This medical officer may be assisted by other specialist medical officers, and always has the help of at least one competent nurse-midwife or health visitor. At such a centre there is much less scope for voluntary help than there is at an infant welfare centre, unless such help is given by trained women or is limited to social inquiries and visiting. The work of these centres comprises consultations by the medical officers, home visiting by the health visitors (who are usually certified midwives), educational classes in the hygiene of pregnancy, the provision of dinners and milk for expectant mothers,

and dental treatment with relief towards the cost of new dentures and treatment. In addition, it is often found that the maternity centre is associated with a maternity hospital or home to which appropriate cases may be referred. Many welfare authorities have provided consultant ante-natal clinics to which patients can be referred by ante-natal officers for consultation and opinion. In the case of those expectant mothers who are unable to attend an ante-natal clinic either owing to the distance to be travelled or to some other reason, some local authorities have provided a domiciliary ante-natal service whereby local medical practitioners, on receipt of a request from the certified midwife attending the patient, carry out examinations prior to the confinement. [161]

The infant welfare centre is primarily an educational institution providing advice and teaching in the care and management of infants and pre-school children, with a view to maintaining them in good health. Its essential function is to supervise the healthy child, but the incidental treatment of minor ailments is generally included within its scope. The work is supervised by a medical officer, who holds regular consultations. Home visiting is carried out by health visitors, and assistance may be given by voluntary workers in order to secure regular attendance at the centre, and to see that the medical officer's instructions and advice have been understood and carried out. Collective advice by means of simple class teaching is an essential feature of the centre. The granting of milk and food free of cost or at reduced prices is another important branch of the work. Usually there is a clinic for the treatment of minor ailments such as sores and discharging ears, and for massage in cases of rickets, the cases being seen at regular intervals by a medical officer. Full records are kept of all children visiting the centre and visited at home. Special treatment centres for circumcision, neglected rickets, adenoids, squint, etc., also exist, often in connection with school clinics or children's hospitals.

Amongst other provisions, reference may be made to such institutions as massage clinics, light-treatment centres, maternity homes and hospitals, birth-control clinics, day nurseries, nursery schools, babies' homes, and home helps who go to a home and do all or part of the housework when a housewife is more or less incapacitated before or after the birth of a child.

The Government's policy of making grants to local authorities and voluntary organisations in aid of these services was altered by the L.G.A., 1929 (s), which introduced block grants in place of percentage grants. The grants are now paid direct by the central authority to the local authority in respect of all approved services within the area of the local authority, and the latter is required to pass on appropriate sums to approved voluntary organisations operating within its area. [162]

THE HEALTH OF THE SCHOOL CHILD

At present the only individuals concerning whom regular reports based on medical inspection are published are the children in attendance at elementary schools. In most districts school medical work is a part of the public health activities of the local authorities, and the M.O.H. is generally also the school medical officer. The functions originally assigned to the school medical officer, in addition to the medical

examination of elementary-school children, were (1) that of reporting on the working and effect of any arrangements made for educating children at "an open-air school, school camp, or other place selected with a view to the improvement of the health and physical condition of the children," (2) the power of advising or approving the closure of a school, and (3) the power of authorising the exclusion of certain children from school on reasonable, specified grounds.

The Education (Administrative Provisions) Act, 1907 (*t*), was the first measure to impose on local education authorities the duty of providing for the medical inspection of school children, but since the war the school medical service has grown tremendously. To-day the work of the school medical officer is highly specialised, and involves either the carrying out or the supervision of medical inspection in elementary and secondary schools, medical treatment, sanitation of schools, medical work in connection with special schools for physically and mentally defective children, and the selection of defective children for admission to such schools. His duties also include the supervision of schemes for the provision of food to school children, co-operation with the examining surgeon in regard to the employment of children in factories, and advice on the suitability, lighting and ventilation of school premises. Recently he has had additional work in connection with co-ordinating mental and physical training in education. [163]

The school child is in the ordinary way medically inspected at least three times during its school career—first as an entrant, then at the age of eight or nine, and lastly in the year before leaving. In the Administrative County of London, school children have four medical inspections during the course of their education. In 1936 the school medical officers carried out about $1\frac{3}{4}$ million inspections of school children in England and Wales, about $1\frac{1}{2}$ million special examinations, and about 2 million re-examinations. Roughly $17\frac{1}{2}$ per cent. of the children examined were found to require some sort of medical treatment (excluding treatment for uncleanness and for dental disease). Over 9 per cent. of children examined had defective vision or squint. Other conditions requiring treatment were principally enlarged tonsils and adenoids, malnutrition, skin diseases, dental diseases and uncleanness.

It has been recognised that correct nutrition, particularly in early life, may substantially affect the fundamental structure of health and well-being. Reports of medical officers do not suggest that there is any deterioration in the nutrition of school children in general. There can be little doubt, however, that under-nourishment does exist in certain areas and amongst certain sections of the population. Unremitting attention is being given to the state of nutrition of the children in these areas and amongst these sections of the people. Progress is slow, as it must be, since methods of assessment and treatment of malnutrition have changed within the last two or three years. The clinical assessment of under-nourishment is now being studied and practised far more widely, and the former mathematical assessment, on the obscure weight-for-age principle, has been almost entirely abandoned. Local authorities are instituting nutrition clinics where the scientific study of this subject may be carried on. The introduction of free meals and milk for the undernourished children is beginning to show a satisfactory development. The milk-in-schools scheme, introduced in October, 1934, by which children may buy one-third of

a pint of milk for a halfpenny, is another part of the movement to obtain a better state of nutrition in childhood. [164]

The organisation of physical education in schools has shown an advance since 1933, and recreative physical activities for adolescents and adults received impetus with the passing of the Physical Training and Recreation Act, 1937 (*u*), which provides for the development of facilities for, and the encouragement of, physical training and recreation, and for the establishment of centres for social activities.

The part played by the nursery school is also of great importance. Its primary purpose is to provide for the physical welfare and wholesome mental development of children of two to five years entrusted to its care. Frequent medical examinations are carried out, and nutritious and well-balanced meals are provided in an environment favourable to growth.

Other important aspects of the school medical service are the orthopædic schemes for dealing with crippling defects, which embrace early and effective treatment and prolonged and continuous after-treatment, with vocational training for the physically incapacitated; the early detection and accurate diagnosis of rheumatism, with clinic treatment and special hospital and convalescent accommodation; the school dental service, which has shown a considerable growth in recent years; and the diagnosis of mental deficiency in children, and the organisation of special classes and schools in which abnormal children are educated. The school dental service has shown a rapid growth both in the numerical strength of the staff employed and in the scope of the work which is being done. Although it was at first limited to the removal of decayed and septic teeth and the filling of such teeth as could be saved, the work has now been extended to orthodontics and the use of general anæsthetics has grown. The provision of X-ray equipment for dental work as an aid in diagnosis is extending. [165]

FOOD AND NUTRITION

Of late years the question of nutrition has been brought into prominence in public health work, and several investigations have been initiated by the M. of H. It is realised that diet is a vital factor in attaining and maintaining health, and consequently knowledge of foods is growing rapidly. There is little doubt that health and happiness depend more upon the food we eat than upon any other single factor. Consequently, the supervision of the food supplies has been an important item in the work of the public health department. Even in the earlier legislation the importance of control of slaughter-houses was realised, and the Towns Improvement Clauses Act, 1847 (*a*), foreshadowed the modern idea that people should eat flesh from healthy animals, cut up and handled carefully by persons free from disease. But the P.H.A., 1875, dealt almost exclusively with the inspection, seizure and condemnation of unsound or unwholesome food, though the powers given to local authorities and their officers were considerable. Both the sanitary inspector and the M.O.H. are empowered to inspect and seize unsound food, but the bulk of this work is actually carried out by the sanitary inspector, and the M.O.H. is called upon only in a consultative capacity. In the larger cities and

(*u*) 30 Halsbury's Statutes 712. See title RECREATION AND PHYSICAL TRAINING, p. 248 *post*.

(*a*) 13 Halsbury's Statutes 531.

towns the inspection of meat is often carried out by qualified veterinary surgeons.

The sampling of milk and other foods and drugs for analysis is carried out under the provisions of the Food and Drugs (Adulteration) Act, 1928 (*b*). In the larger districts a specially qualified sanitary inspector is usually entrusted with the duty of sampling articles of food for analysis by the public analyst. Power of entry to examine for unsound food and to take samples is given by several Acts. [166]

The supervision of the food supplies entails the inspection of all premises where food is prepared, cooked, or exposed or deposited for the purpose of sale as food for man. A matter of special importance is the health of food handlers, especially those who deal with milk and milk products, for such foodstuffs may be the vehicles by which diseases such as typhoid and dysentery, scarlet fever, diphtheria and septic sore throat may be spread. [167]

A great advance has been made in the methods of production and sale of milk. The Milk (Special Designations) Order, 1923 (*c*), was designed specially to encourage the more hygienic production of milk, and for the first time standards of purity were imposed. The Order laid down special conditions under which licences were granted for the sale of specially designated milks conforming to a high standard, both in regard to methods of production and to cleanliness of the product. This Order remained in force until it was replaced by the Milk (Special Designations) Orders, 1936 (*d*) and 1938 (*e*), which reduce the number of designated milks from four to three, modify the bacteriological tests in respect of these milks, and delegate to local authorities the licensing powers formerly held by the M. of H. As a result of these Orders, there is in Great Britain at the present time an official system of classification of milk which has led to the provision of milk superior in quality to any previously obtainable. The system is voluntary, and nobody is compelled by law to have his milk classified, but the best type of farmer is making great efforts to produce milk of the highest possible grade. There are, however, many producers of milk who seem to be impervious to educational propaganda, and who have to be forced by compulsory powers to produce and handle the product in a cleanly manner. [168]

Sophistication of the food supply by adding preservatives is under rigorous control by local authorities. The Public Health (Preservatives in Food) Regulations, 1925 (*f*), prohibit the use of injurious preservatives and colouring matters in foods, and require a declaration to be made when any food sold to the public contains permitted preservative.

The progress towards a safe food supply in this country has been slow, and the law needs to be simplified and brought up to date. Food legislation has been omitted from the P.H.A., 1936, and a comprehensive consolidating and amending Food and Drugs Act, based on the recommendations of the Local Government and Public Health Consolidation Committee, was passed into law on 29th July 1938 and comes into operation on 1st October 1939. [169]

INFECTIOUS DISEASES

An increasing knowledge of bacteriology and of the prime causes of disease led, during the two last decades of the nineteenth century,

(b) 8 Halsbury's Statutes 884.

(c) S.R. & O., 1923, No. 601.

(d) S.R. & O., 1936, No. 356; 29 Halsbury's Statutes 169.

(e) S.R. & O., 1938, No. 218.

(f) S.R. & O., 1925, No. 775.

to great activity in combating communicable diseases. The P.H.A., 1875, dealt with environmental hygiene, nuisances, etc., and was undoubtedly responsible for a reduction, in a short period, in the death rate from the infectious intestinal diseases. Typhus fever disappeared entirely.

Progress was made when the Infectious Disease (Notification) Act, 1889 (g), and the Infectious Disease (Prevention) Act, 1890 (h), came into force. The diseases statutorily notifiable have been added to by departmental regulations, and the full list of those which must be notified to the M.O.H. is as follows: smallpox, cholera, diphtheria, membranous croup, erysipelas, scarlet fever, typhus, typhoid, enteric or relapsing fever, plague, cerebro-spinal fever, acute poliomyelitis and polio-encephalitis, encephalitis lethargica, ophthalmia neonatorum, tuberculosis, malaria, dysentery, trench fever, acute primary pneumonia, acute influenzal pneumonia and puerperal pyrexia. In addition, local authorities are given power subject to the consent of the M. of H. to declare any other infectious disease notifiable within their district. [170]

Local authorities are responsible for taking measures to prevent the spread of infection; for the protection of the food supplies—particularly milk—against infection; for the cleansing of filthy and verminous premises and persons; and so on. An important provision of the 1890 Act, as indicating progress, was that giving powers in relation to milk supplies suspected or believed to be in any way connected with the occurrence or spread of disease. By this time hospital accommodation was available, and isolation was being widely used in connection with the control of infectious disease.

In addition, port sanitary authorities (renamed “port health authorities” by the P.H.A., 1936) were created to carry out various duties with a view to preventing the importation of epidemic and infectious diseases from abroad. The Public Health (Aircraft) Regulations, 1938 (i), are designed to prevent the introduction of infectious diseases into the country through the medium of air-borne traffic. They resemble the Port Sanitary Regulations, 1933 (k) (which were put into operation to secure a similar object in regard to ships), in so far as certain measures must be taken in regard to outgoing and incoming aircraft. These measures include medical inspection of passengers and crews, and the disinfection, cleansing and disinfestation from vermin of the aircraft coming into the country and the prohibition of embarkation of persons who might convey the diseases of plague, cholera, yellow fever, typhus fever and smallpox. [171]

In 1871, which was a great pandemic year for smallpox, the death rate from this disease per 100,000 of the population was 101·2; and the average death rate for the decennium 1871–1880 was 24·36. From 1885, when the death rate was 10·3, the number of deaths from smallpox had declined. The death rate in the decennium 1919–1928 was 0·06. In 1936 twelve cases of smallpox, none of them fatal, were notified. The explanation of this important change is that public health authorities have practically, from their inception, been concerned in preventing the spread of this disease and with the segregation and treatment of smallpox cases. There has been much difference of opinion on the question of compulsory vaccination and it is not intended

(g) 13 Halsbury's Statutes 811.
(i) S.R. & O., 1938, No. 299.

(h) *Ibid.*, 816.
(k) S.R. & O., 1933, No. 35.

to enter into the discussion here; but there can be no doubt that the introduction of the Vaccination Acts, 1867 (*l*), 1871 (*m*), 1898 (*n*), and 1907 (*o*) and the Statutory Rules and Orders made under these, has gone a long way towards eliminating smallpox in this country and lessening the virulence of this disease. [172]

In England the duty of making arrangements for the treatment of persons suffering from tuberculosis at or in dispensaries, sanatoria or other institutions was, under the P.H. (Tuberculosis) Act, 1921 (*p*), placed upon the county councils and the county borough councils. In Wales, the King Edward VII Welsh National Memorial Association, a voluntary body, carry out the treatment of tuberculosis on behalf of the county and county borough councils.

Tuberculosis was not long ago the one disease most dreaded in this country; but with the growth of knowledge methods of prevention and treatment have been introduced. In 1908 a system of notification of tuberculosis was made applicable to poor-law cases. The Public Health (Tuberculosis) Regulations, 1912, made provision amongst other matters for the compulsory notification of all cases of tuberculosis in all its forms.

Under the National Insurance Act, 1911 (*r*), treatment for tuberculosis was made one of the benefits for insured persons, and provision was also made for research. A report of the Departmental Committee on Tuberculosis in 1912 set out the tuberculosis problem in its preventive, curative and other aspects, and advised on the organisation of tuberculosis schemes. The Government set aside an annual sum for a national scheme; all benefits under this scheme were to be made available for the community at large and not merely for insured persons, and the organisation was placed in the hands of the county councils and county borough councils. The focus of the scheme was the tuberculosis dispensary, with a skilled staff which diagnosed cases, meted out special forms of treatment, and also acted as a centre for education and after-care. Parallel with the tuberculosis dispensary was the institutional treatment centre—the sanatorium, the hospital and similar residential places of treatment. The P.H. (Tuberculosis) Act, 1921 (*s*), placed an obligation on county councils and county borough councils to establish schemes for the treatment of *all* persons suffering from tuberculosis. At the end of 1936, 46 county councils and 75 county borough councils in England had established schemes, and three counties and four county boroughs had fulfilled their obligations through joint committees. In London the L.C.C. is responsible for the working of the tuberculosis scheme as a whole, including institutional treatment, and the dispensary service is run by the metropolitan borough councils. Voluntary tuberculosis care committees fulfil an important service in tuberculosis schemes, their main purpose being to deal with such matters as the provision of extra nourishment for patients, the care of children during the residential treatment of mothers and the removal of child contacts in advanced cases, the provision of clothing for patients going away for residential treatment, the provision of beds, bedding, open-air shelters and nursing appliances, together with the duties in connection with the re-housing of patients

(*l*) 13 Halsbury's Statutes 609.

(*n*) *Ibid.*, 875.

(*p*) *Ibid.*, 971.

(*r*) 20 Halsbury's Statutes 465.

(*m*) *Ibid.*, 618.

(*o*) *Ibid.*, 910.

(*s*) 13 Halsbury's Statutes 971.

and their families, the employment of patients, occupational therapy and recreation.

In 1921 the standardised death rate from tuberculosis was 1,117 per million of the population; the figure for 1936 was 657, and the decline has been steady throughout these years. In a comparatively short period of time, during which local authorities have been directing close attention to the tuberculosis problem, the death rate from this disease has been halved. [173]

There is ample evidence that the infectious disease services of local authorities are remarkably effective. There are, however, certain diseases such as rheumatism and cancer in regard to which little progress has been made, and further research work is needed. Having regard to the grave economic loss to the country occasioned by rheumatic disorders, it is surprising to find that very little has been done in the way of providing treatment clinics. There have been public apathy and lack of knowledge as to the serious ravages made by this group of diseases on the health and economic well-being of the community.

At least one-sixth of the total payments under national health insurance are made necessary by rheumatic diseases; but there is no provision for special physical treatment under the national health insurance.

In 1936 an Empire Rheumatism Council was constituted to undertake the organisation of an effective campaign against rheumatic diseases. Research into causation; investigation of the comparative value of the widely different therapeutic measures; increased provision of the various forms of physical treatments, which cannot be provided by the ordinary medical practitioner; and increased in-patient accommodation, especially in the form of research units in hospital: this is the plan of campaign of the Empire Rheumatism Council. It is thus probable that the problem will receive more adequate attention in the future. [174]

SANITATION

In England and Wales the authorities responsible for sanitation are the county borough councils and the councils of county districts. They have the power and duty to appoint health officers—M.O.H., sanitary inspectors, health visitors and other officers intimately connected with the work dealing with the public health. In so far as sanitation is concerned, the principal duties of a local authority are briefly as follows: inspection of their district to discover the existence of nuisances, and abatement of such nuisances; enforcement of hygienic conditions in houses, factories, etc.; prevention of atmospheric pollution by smoke; cleansing of streets and collection and disposal of house refuse; supervision of cleanliness of premises where food is prepared, sold or stored; supervision of the water supply; enforcement of adequate drainage of houses; provision of sewers and disposal of sewage; prevention of river pollution; and cleansing of verminous premises, articles and persons.

The work of the local authority in connection with sanitation is carried out by a committee of their own number, the public health committee. The committee deals with the reports of its officers and governs the policy of the public health department.

It is not intended here to discuss the progress made in sanitation generally since the introduction of public health legislation. It is

enough to say that the local health authorities and their officers have assumed a tremendous responsibility in regard to the health and sanitary welfare of the communities they have in their charge; the progress they have made is considerable, and in it there lies a spur to further endeavour. [175]

HOUSING AND TOWN PLANNING

With the rapid growth of the industrial population in the first half of the nineteenth century there arose a state of chaos in regard to housing owing to the absence of control by any authority. Houses were built by the thousand without regard to planning, essential conveniences and amenities. The influence of this period is still felt in large towns throughout the country. The Labouring Classes Lodging Houses Act, 1851 (*t*), which was an adoptive Act of narrow scope enabling certain local authorities to provide lodging houses for the working classes, made a start in combating the evil. This measure was followed by the Labouring Classes Dwelling-houses Act, 1866 (*u*), which enabled the Public Works Loan Commissioners to advance loans to local authorities to enable them to carry out their duties under the 1851 Act, and also to private persons or bodies or proprietors of land who wished to erect healthy dwellings for the working classes. Power to make demolition orders in respect of dwellings unfit for human habitation was given by the Artisans and Labourers Dwellings Act, 1868 (*a*). The M.O.H. had to report on such insanitary premises to the local authority. His report was to be passed to the surveyor, whose duty it was to consider whether the premises could be repaired or altered so as to be made fit, or whether demolition should be enforced. An order to carry out necessary works of repair could be made, and the authority could execute such works in default of the owner and take a first charge on the premises. The Artisans and Labourers Dwellings Improvement Act, 1875 (*b*), which dealt with unhealthy areas, undoubtedly paved the way for procedure regarding clearance areas, redevelopment areas, etc., as embodied in present-day legislation, but all clearance schemes had to be confirmed by Parliament.

Progress under these Acts was, however, almost negligible, and it was not until the passing of the Housing of the Working Classes Act, 1890 (*c*), that the necessity of legislation relating to housing seems to have been realised. This Act remained the principal Act and provided the basis of action in regard to housing up to 1925. It consolidated and extended the law relating to housing, and enabled local authorities to make schemes for the clearing of insanitary areas and for the carrying out of rehousing; it dealt with insanitary houses and obstructive buildings and provided for their repair, closure or demolition; and empowered local authorities to purchase land and "erect thereon buildings suitable for lodging houses for the working classes." [176]

The Small Dwellings Acquisition Act, 1899 (*d*), empowered local authorities to make loans to persons within their area for the purpose of enabling them to acquire the ownership of their houses. Small amendments of the Act of 1899 appeared in the Housing of the Working

(*t*) 14 & 15 Vict. c. 34.
(*a*) 31 & 32 Vict. c. 130.
(*c*) 53 & 54 Vict. c. 70.

(*u*) 29 & 30 Vict. c. 28.
(*b*) 38 & 39 Vict. c. 36.
(*d*) 13 Halsbury's Statutes 881.

Classes Acts, 1900 (e) and 1903 (f). The Housing, Town Planning, etc., Act, 1909 (g), amended the earlier Acts, introduced town planning schemes, provided for the appointment of County Medical Officers of Health and secured the establishment of public health and housing committees by county councils.

The earlier housing legislation had as its main objects, briefly, the elimination of unhealthy housing conditions, and the provision of new accommodation for the working classes.

During the years 1914 to 1918 housing progress was at a standstill. After the war there was a quick succession of Acts which imposed duties on local authorities to prepare schemes to meet the housing needs of their areas, extended their powers of compulsory acquisition of land and premises, and provided for contributions by the Government towards the expenses of local authorities and public utility societies. [177]

The Housing Act, 1925 (h), and the Town Planning Act, 1925 (i), consolidated nearly all the provisions of earlier legislation. The Housing Act, 1930 (k), amended the 1925 Act considerably, in particular with respect to the clearance and treatment of unhealthy areas and the repair and demolition of insanitary houses. Minor legislation in regard to financial provisions followed, and in 1935 another Housing Act (l) was passed, the objects of which were to make further and better provision for the abatement and prevention of overcrowding, and the re-development of urban areas in connection with the provision of housing accommodation and the reconditioning of buildings; to make provision for the establishment of a housing advisory committee and commissions for the management of local authorities' houses; to amend the enactments relating to the housing operations of public utility societies and other bodies; and to provide for the consolidation of housing accounts. The Housing Act, 1936 (m), was purely a consolidating measure. The Housing (Financial Provisions) Act, 1938 (n), amended the financial details attendant on the provision of houses for the working classes.

Current housing policy has three principal objectives: (i.) the clearance, or other appropriate treatment, of unfit houses and the effective rehousing of those displaced; (ii.) the prevention of overcrowding and the rehousing of overcrowded families; and (iii.) the assurance of an adequate regular production of good houses to meet ordinary working class demands at low rents. Progress in regard to slum clearance has been satisfactory since 1933. During 1935 local authorities were engaged in a comprehensive survey of working-class houses to ascertain the extent of overcrowding. This survey showed that 3.8 per cent. of the families in England and Wales were living in overcrowded conditions: the number of houses inspected was 8,924,523, and the number found to be overcrowded was 341,554. The 1935 Act placed on local authorities the duty of formulating proposals for dealing with the overcrowding in their areas. With respect to the provision of houses, the aim is to restore as far as possible to an economic basis the production of houses to meet the ordinary needs of the working classes. During the period of acute shortage which has

(e) 63 & 64 Vict. c. 59.

(g) 10 Halsbury's Statutes 846.

(i) *Ibid.*, 1079.

(l) 28 Halsbury's Statutes 199.

(n) 1 & 2 Geo. 6, c. 16.

(f) 3 Edw. 7, c. 39.

(h) 13 Halsbury's Statutes 1001.

(k) 23 Halsbury's Statutes 396.

(m) 29 Halsbury's Statutes 565.

prevailed since the war, the Government have given subsidies with a view to encouraging local authorities and private persons and bodies to erect working-class dwellings. The subsidies prescribed in the 1936 Act are (i.) in respect of every person removed from a condemned house to a new dwelling, and (ii.) in respect of flats built on expensive sites for the purpose of housing persons displaced from overcrowded dwellings. [178]

The question of housing is closely bound up with town and country planning. As towns expand it is important that their growth should be carefully controlled in order to preserve their existing amenities, to check ribbon development, and to provide for social amenities. The Town and Country Planning Act, 1932 (o), dealt with the reservation of land for public purposes (roads, open spaces, schools, allotments, cemeteries, etc.), and the allocation of land to various classes of development (residential, industrial, commercial, agricultural) by private initiative, and the control of development in the interests of sanitary conditions, amenities and conveniences. Progress under this Act and under the Restriction of Ribbon Development Act, 1935 (p), was at first slow but local authorities are realising the importance of promoting schemes, with the result that regional planning is now gaining ground steadily. [179]

INDUSTRIAL HYGIENE

Industrial hygiene has three aspects—medical, economic and sociological, and its object is to protect the health of the worker and to prevent the diseases which are intimately connected with industry.

Industrial health, welfare and safety are the concern of the local authorities and of the Factories Department of the H.O. Legislation was slow in developing. The P.H.A., 1875, gave some control over environmental conditions in factories and workshops; in 1883 an Act was passed to regulate the white-lead industry; the year 1898 saw the creation of the post of Medical Inspector of Factories. The Factory and Workshop Act, 1901 (q), dealt with the safety of the worker from the point of view of accident and fire hazard, and contained certain sanitary provisions. In addition, departmental regulations and orders have been issued from time to time dealing with the welfare of workers (provision of drinking water, w.c. accommodation, washing facilities, etc.), and the compulsory notification of certain industrial diseases. [180]

The Factories Act, 1937 (r), consolidates, simplifies, amends and amplifies factory legislation. By this Act the supervision over industrial health, welfare and safety is carried out by the H.O., and district councils enforce certain provisions in regard to sanitary conveniences, means of escape in case of fire, bakehouses, etc. The district councils are also responsible for administering the provisions in regard to cleanliness, overcrowding, temperature, ventilation and drainage of floors in factories where mechanical power is not used.

A reasonably high standard of industrial hygiene has now been reached, but in the past development was hindered in various ways. In the first place the allocation of duties to the Factory Department of the H.O. has been a matter in dispute for some time; some experts

(o) 25 Halsbury's Statutes 470.
(q) 8 Halsbury's Statutes 517.

(p) 28 Halsbury's Statutes 79, 275.
(r) 30 Halsbury's Statutes 207.

favour the idea that the M. of H. should administer factory legislation. The staff of the Factory Department is a small one, and frequent inspection of premises is a difficult matter. Further, the splitting-up of duties between the Factory Department and the local authorities sets up a dual standard of inspection, and this is undesirable. [181]

GENERAL

In addition to the subjects already dealt with, public health administration embraces other branches of activity, such as public dental services, district nursing, hospital treatment, special services in connection with venereal diseases, the welfare of the blind, and physical education. [182]

THE FUTURE

The march of public health has been accompanied by the growth of other services, provided or financially assisted by the public authorities, which have as their object the enhancement of the welfare of individual citizens. In 1900 Great Britain spent on social services 19s. 2d. per head of the population. The figure is now about £9 per head, and the total bill of over £400 million a year is about one-tenth of the national income. About one-eighth of this expenditure is devoted to public medicine. The cost of preserving the public health is great, but it is vastly less than the cost of disease, and it should be possible to reduce the expenditure on disease by spending more on its prevention. There unfortunately seems to be some evidence that many people do not co-operate with local authorities by taking full advantage of the services provided for their benefit. For example, only 48 per cent. of expectant mothers visit ante-natal clinics, only 60 per cent. of the children born attend infant welfare centres during the first year of life, only 64 per cent. of the children found at school inspections to need dental treatment receive such treatment, and a large number of cases of tuberculosis are not notified to the medical officer of health until after death.

In 1936 the Minister of Health inaugurated a campaign which had as its object the encouragement of a greater use of the health services provided by local authorities. Neither this campaign, nor any subsequent campaign on the same lines, can be a success unless it is followed by continuous local effort.

Sickness and the fear of sickness are the great paralyzers of human endeavour. They can be reduced more than they have been, and it is the duty of the public health service to do this. The reduction of infant mortality has done more good by freeing family life from worry and distress than by promoting the survival of infants; school medicine has done more in increasing children's happiness than in freeing hospitals from the treatment of the end-results of disease which at some earlier time had been avoidable or curable. The suppression of disease is not the end but the beginning of the task of the public health service. The level of health and vigour attainable is not known, but it is known that every effort to improve health does produce some benefit, and that in no direction has a point been reached where improvement ceases. [183]

PUBLIC HEALTH ACTS NUISANCES

See NUISANCES SUMMARILY ABATABLE UNDER THE PUBLIC HEALTH ACTS.

PUBLIC HEALTH AND HOUSING COMMITTEES

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See also titles :

COMMITTEES ; COUNTY COUNCIL ; DISEASES OF ANIMALS ; HOUSING ; HOUSE PROPERTY MANAGEMENT ;	HOUSING BONDS ; HOUSING SUBSIDIES ; INFECTIOUS DISEASES ; RECONDITIONING OF HOUSES ; TOWN AND COUNTRY PLANNING.
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APPOINTMENT AND CONSTITUTION OF COMMITTEES

The general power to appoint committees is dealt with under the title COMMITTEES (Vol. III., p. 259). Under sect. 71 of the Housing, Town Planning, etc., Act, 1909, every county council was required to appoint a public health and housing committee. No other authority has ever been compelled to appoint a single joint committee or separate committees for health and housing. The Local Government and Public Health Consolidation Committee (a) expressed the view that a single committee was not necessarily most convenient for the purpose, and that the removal of the requirement as regards county councils would simplify the law without throwing away anything of value. The section has accordingly been repealed (b).

The constitution of such committees and sub-committees has also been changed. Until 1930 a public health committee, if formed, or a public health and housing committee of a county council, had to consist entirely of members of the council. Housing committees of borough or district councils, on the other hand, could be composed merely of a majority of members of the council. Sect. 14 (3) of the L.G.A., 1929 (c), authorised the co-option of members to public health

(a) Second Interim Report, 1936, Cmd. 5059.

(b) P.H.A., 1936, Sched. III., Part V. ; 29 Halsbury's Statutes 549.

(c) 10 Halsbury's Statutes 891.

committees of county boroughs and to the public health and housing committees of county councils, up to one-third of their total membership, and also the formation of sub-committees consisting wholly or partly of members of the council. Co-option was apparently intended to meet the situation created by the transfer of poor law functions which might be of a public health character. This provision, so far as it related to public health committees, and the sanction contained in the Housing Act, 1925, as to housing committees of borough and district councils, were replaced by the general power to appoint committees, with up to a third of co-opted members, contained in the L.G.A., 1933 (*d*), but the power to co-opt on to sub-committees of these committees was then withdrawn. Under the P.H.A., 1936, the sanction to co-opt outside members on to sub-committees of public health committees has been restored (*e*), provided that the majority of the members shall be members of the county council or local authority. Although the formation of a public health and housing committee by a county council has ceased to be obligatory, a county council other than the L.C.C. is still required to refer all matters relating to housing (except the raising of a rate or borrowing money) to such a committee (*f*).

The general position, therefore, is that public health committees and housing committees, or public health and housing committees, may, but need not necessarily, be appointed, and that they may contain outside members. If a county council forms a public health and housing committee, housing matters must stand referred to it. Sub-committees of these committees may be set up, but a sub-committee of a public health committee only may contain co-opted members. Power of delegation is as stated for committees and sub-committees generally under the title COMMITTEES.

As the practice of constituting a single committee for public health and housing may fall into disuse, and as these two functions may be regarded as distinct, they will be dealt with separately in the remainder of this article. [184]

PUBLIC HEALTH COMMITTEES

General Functions.—The extent and nature of the matters referred to public health committees differ. Generally they deal with public health questions in connection with the prevention and treatment of disease. It is convenient to refer to the public health committee all matters which fall within the province of the medical officer of health and the sanitary inspector (*g*), except those which must by law stand referred to, or closely impinge on the main functions of, some other committee. The following list of such matters is illustrative, but not exhaustive :

P.H.As.—Prevention and treatment of acute infectious diseases ; prevention and treatment of tuberculosis ; prevention and treatment of venereal diseases ; care of expectant and nursing mothers and young children (*post*, p. 81). ; hospital provision and management (*post*, p. 81) ; supervision of nursing homes ; verminous persons and premises ; common

(*d*) S. 85 ; 26 Halsbury's Statutes 352.

(*e*) P.H.A., 1936, s. 273 ; 29 Halsbury's Statutes 498.

(*f*) Housing Act, 1936, s. 153 ; 29 Halsbury's Statutes 666.

(*g*) The Sanitary Officers (Outside London) Regulations ; S.R. & O., 1935, No.

lodging houses; tents, vans, sheds, etc.; canal boats; atmospheric pollution; offensive trades; nuisances; unwholesome wells and insanitary cisterns; testing of drains, cesspools, sanitary conveniences, etc.; filthy and choked watercourses; sanitation of workplaces (*post*, p. 82); unsound meat and other foods; prevention of contamination of food; repair of houses (*infra*); port health measures, if the district includes a port. [185]

Midwives Acts.—The provision of a midwifery service and the supervision of midwives.

Rivers Pollution Prevention Acts.—Prevention of pollution and blockage of streams.

P.H. (Regulations as to Food) Act, 1907.—The enforcement of regulations relating to the preparation, handling, storage and sale of food.

Milk and Dairies Acts and Orders.—Supervision and licensing of milk producers and vendors, and of premises where milk is produced, stored, handled or exposed for sale.

Food and Drugs (Adulteration) Act, 1928.—The sampling and analysis of food and drugs.

Merchandise Marks Act, 1926.—Enforcement of regulations for preventing the sale of imported foods unless duly marked with the place of origin.

Rag Flock Acts.—Prevention of the sale or use of contaminated rag-flock.

Rats and Mice (Destruction) Act, 1919.—Enforcement of measures for the destruction of rats and mice.

Factories Act, 1937.—Supervision of bake-houses; sanitary conveniences; cleanliness, overcrowding, temperature, ventilation and drainage of floors, in factories not using mechanical power.

Shops Acts.—Closing hours of shops; hours of employment of young persons; health and comfort of shop workers.

Housing Act, 1936, s. 6.—Enforcement of bye-laws as to working-class houses. [186]

Sub-Committees or Separate Committees.—County councils have executive functions in relation to only a limited number of the above matters; in this connection the title COUNTY COUNCIL (Vol. IV., p. 161), should be consulted. Some of these matters are also outside the province of county district councils. These two types of authority may therefore find further sub-division for administration unnecessary. In county boroughs, however, the public health responsibilities are now so large and various that it is often convenient to distribute them among different committees or sub-committees. For instance, a separate committee, reporting direct to the council, may be established to handle the large hospital problems engaging the attention of these authorities since the transfer of poor law functions in 1930. This committee may be called a hospitals committee, or a hospitals and medical services committee, if it manages other modern health services which are clinical and personal as distinct from environmental. It should be noted that every welfare authority is required to appoint a maternity and child welfare committee, to which all relevant matters shall stand referred, but it may be any other committee of the council or a sub-committee of it. A local authority may find it convenient to refer all public health matters to the public health committee—or health committee—and create standing sub-committees, say, for (a) sanitary services, dealing with environmental hygiene and the

control of infectious diseases, (b) hospitals, concerned with the management of hospitals, including those for infectious diseases and tuberculosis, and (c) medical services, including care of mothers and young children, prevention and treatment of venereal diseases and prevention and treatment (outside hospitals) of tuberculosis. On the other hand, it may prefer to set up separate sub-committees under the titles "tuberculosis" or "venereal diseases" which consider all matters relating to these diseases, including the management of institutions for their treatment. There are no ideal criteria to guide authorities in this matter, and their decision will aim at a reasonable distribution of the volume of work with the minimum of overlapping. [187]

Co-ordination with Other Committees.—Certain matters concerning the public health must stand referred to other committees. For instance, school medical inspection and treatment are functions of education committees (*h*). They are closely related to maternity and child welfare, and uniformity and continuity of practice may be attained by the formation of a joint sub-committee reporting to the health and education committees. Similarly, in areas where declarations (*i*) or appropriations (*j*) have not been made, and functions have not been assigned (*k*) by the public assistance committee, common problems of public health and poor law administration may be dealt with by a joint sub-committee. Diseases of animals [see titles DISEASES OF ANIMALS (Vol. IV., p. 394) and INFECTIOUS DISEASES (Vol. VII., p. 202)] may be a matter of concern to the public health, and in the boroughs which are authorities under the Diseases of Animals Acts, the committee for this purpose, which must be appointed (*l*), may usefully consist of members who are also members of the health committee. [188]

Similarly, it may be desirable to prevent overlapping and lack of co-ordination in housing matters. Although the repair of houses is provided for in Part II. of the Housing Act, 1936 (*m*), certain housing defects may be dealt with as nuisances under Part III. of the P.H.A., 1936 (*n*), and, in any case, the officers mainly concerned with repairs are the M.O.H. and the sanitary inspector. The same comment applies to the overcrowding provisions of Part IV. of the Housing Act. These matters may therefore be referred to the health committee, or a joint health and housing sub-committee may be formed, to which also responsibility may be extended for closure and demolition of individual houses under Part II. of the Housing Act. [189]

HOUSING COMMITTEES

The reference to these committees usually includes the administration of the following Parts of the Act of 1936, viz. : III. (clearance and re-development), V. (provision and management of houses for the working classes), and such of the provisions of VII. (general) and VIII. (supplemental) as relate to the foregoing; recommendations under Part VI. (financial) and such provisions of the Act of 1930 as have not

(*h*) Education Act, 1921, s. 4 and Part VII. ; 7 Halsbury's Statutes 132, 174.

(*i*) L.G.A., 1929, s. 5 ; 10 Halsbury's Statutes 885.

(*j*) L.G.A., 1933, s. 163 ; 26 Halsbury's Statutes 396.

(*k*) Poor Law Act, 1930, s. 4 (4) ; 12 Halsbury's Statutes 971.

(*l*) Diseases of Animals Act, 1894, s. 31 and Fourth Schedule ; 1 Halsbury's Statutes 406, 423.

(*m*) 29 Halsbury's Statutes 566.

(*n*) *Ibid.*, 394.

been repealed; the administration of the whole or some of the provisions of Part II. (repair, maintenance and sanitary condition of houses), and Part IV. (abatement of overcrowding), if these have not been referred to the health committee; administration of the Housing (Rural Workers) Acts (reconditioning of houses for agricultural workers); and recommendations under the Small Dwellings Acquisition Acts (loans to persons for acquisition of houses intended for their personal occupancy). The administration of the Town and Country Planning Act, 1932, may also come under their purview, although the fact that this Act affects lands and buildings used for other purposes than housing may be a reason for establishing an independent committee for the purpose, or referring it to some other existing committee concerned with public works.

The constitution of housing committees has been mentioned already (*ante*, p. 82). For details as to their responsibilities and as to their special functions in counties reference should be made to the appropriate titles, viz.: HOUSING (Vol. VII., p. 63), HOUSE PROPERTY MANAGEMENT (*ibid.*, p. 51), HOUSING BONDS (*ibid.*, p. 93), HOUSING SUBSIDIES (*ibid.*, p. 98), INSANITARY HOUSES (*ibid.*, p. 274), RECONDITIONING OF HOUSES, COUNTY COUNCIL (Vol. IV., p. 161) and TOWN AND COUNTRY PLANNING. [190]

LONDON

The public health duties of the L.C.C. are administered through its housing and public health committee and hospitals and medical services committee. The former committee consists of seventeen members of the council and five persons appointed by the council, together with certain *ex-officio* members. The reference of the committee includes general housing matters and general matters of public health, including smoke nuisance and water supply. A sub-committee appointed for dealing with public health matters may consist wholly or partly of members of the committee (L.C.C. (General Powers) Act, 1934, sect. 19 (1) (d) (o)). [191]

The hospitals and medical services committee consists of seventeen members of the council, seven other persons and certain *ex-officio* members. Their reference includes questions affecting the prevention and treatment of disease, ambulance services, control and registration of nursing homes, rescue and preventive work, midwives, provision and maintenance of hospitals, local medical services and maternity and child welfare.

Public health committees and housing committees are appointed by metropolitan borough councils. A committee appointed for any of the purposes of the Housing Acts may include non-members of the council, but a majority of the members must be members of the council (L.C.C. (General Powers) Act, 1934, sect. 27 (1) (b) (p)). A committee appointed for the purposes of the P.H. (London) Act, 1936, may (sect. 4), subject to the terms of its appointment, serve and receive notices, take proceedings and empower officers of the borough council to make complaints and take proceedings on its behalf and otherwise to enforce the provisions of the Act, other than those specifically excepted. [192]

As to distribution of the public health and housing duties of the City

corporation among committees, see title CITY OF LONDON, Vol. III., p. 178.

As to delegation to committees and disqualification for membership and other matters relating to committees of the L.C.C. and metropolitan borough councils, see L.C.C. (General Powers) Act, 1934, sects. 19 to 30 (q). [193]

(q) 27 Halsbury's Statutes 411—418.

PUBLIC HOUSE

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See also titles : INTOXICATING LIQUORS ;
MUSIC, SINGING AND DANCING ;
TOWN PLANNING SCHEMES.

Preliminary.—The expression “public house” has been given a variety of definitions, but it is commonly interpreted as meaning a house in which intoxicating liquor is sold for consumption on the premises. It is in this sense that the expression is used in this title. By means of the licensing system the responsible public authorities exercise control over the use of premises for the sale of intoxicating liquor, and the structure and conduct of such premises. (See title INTOXICATING LIQUORS, Vol. VII., p. 337.) In addition to this type of control and the control exercisable by the police authority under the numerous statutory provisions relating to penalties for the improper conduct of licensed premises, there are also a number of Acts of Parliament relating to public health, town and country planning and the control of places of public entertainment, which either specifically or generally affect public houses, and certain specific statutory provisions with regard to their management by the State. [194]

Public Health.—By sect. 89 of the P.H.A., 1936 (a), a local authority may by notice require the owner or occupier of any inn, public house, beer-house, refreshment-house or place of public entertainment to provide and maintain in a suitable position such number of sanitary conveniences for the use of persons frequenting the premises as may be reasonable ; and a person failing to comply with such notice is liable to a fine not exceeding £5 and a further fine not exceeding £2 for each day on which the offence continues after conviction. The defendant in the proceedings may question the reasonableness of the requirements or of the authority's decision to address the notice to him and not to

the owner or occupier, as the case may be. (See also title PUBLIC LAVATORIES.) [195]

Town and Country Planning.—The erection of public houses or the use of premises as such can be controlled in planning schemes under the Town and Country Planning Act, 1932, by means of zoning provisions. Licensed premises may be prohibited in certain areas and permitted only with the consent of the planning authority in others (*b*), and by intelligent co-operation between landowners and the local authority satisfactory arrangements as to siting may be reached. In Welwyn Garden City, for example, the whole of the land with the exception of land owned by the railway company, the council and the churches, is owned by a Development Company and, under the planning scheme (non-statutory), the Development Company can, if they think fit, agree to a public house being erected upon land to be leased from them within the area zoned for the erection of business premises without the consent of the local authority. In granting leases the Company have been careful to ensure the insertion of restrictive covenants to ensure that all trading and commercial undertakings in the town are strictly controlled. At the present time there is only one public house on the Company's freehold; this was for some time controlled by one of its subsidiary companies, but is now owned by a separate company, the Development Company being represented by one of their directors on the board. [196]

Public Entertainments.—Public houses may also be subject to a further control where they are used for the purpose of public dancing, singing, music or other public entertainments if they are within an area where premises used for such purposes require to be licensed (*c*). The licensing authority in granting licences for public entertainments are empowered to impose such conditions as they think fit, and it is often necessary for structural alterations to be made and other requirements to be complied with before a licence is granted. [197]

State Management.—By the Defence of the Realm (Liquor Control) Regulations, 1915, the Central Control Board (Liquor Traffic) was given in areas to which the regulations applied considerable control over the liquor trade and power in appropriate cases to acquire premises or the business conducted on any premises (*d*). In four areas, two in England and two in Scotland, the Board compulsorily acquired licensed premises subject to the payment of compensation and so obtained direct control of the trade of intoxicating liquor in the areas concerned. The Central Control Board was subsequently abolished, but provision was made for the continuance of the system of state management by the Secretary of State or the Secretary for Scotland (now the Secretary of State for Scotland) as the case might be (*e*). The carrying

(*b*) Model clauses for use in the preparation of schemes issued by the M. of H., January, 1938, Part IV. See title TOWN AND COUNTRY PLANNING.

(*c*) See title MUSIC, SINGING AND DANCING (Vol. IX., p. 307); *Green v. Botheroyd* (1828), 3 C. & P. 471; 15 Digest 757, 8160. The mere singing and playing by customers in the smokers room of a public house without any encouragement from the publican does not constitute a public entertainment; *Brearely v. Morley*, [1899] 2 Q. B. 121; 15 Digest 759, 8172, and see *Badger v. James* (1934), 73 Sol. Jo. 768; and see 72 J. P. Jo. 160; 78 J. P. Jo. 515; 79 J. P. Jo. 448.

(*d*) See Minutes of Evidence taken before the Royal Commission on Licensing (England and Wales), 1929–30, pp. 999 *et seq.* and Report of the Royal Commission on Licensing (England and Wales), 1929–31 (printed 1932).

(*e*) Licensing Act, 1921, s. 16; 9 Halsbury's Statutes 1063.

on of state management schemes is governed by statutory provisions which (*inter alia*) exempt, subject to certain exceptions, the Secretaries of State from the jurisdiction of licensing justices ; subject the manager of the premises (as to the conduct of the business) to the ordinary provisions of the law ; and protect the monopoly of the Secretary of State (f). The Secretaries of State both in England and Scotland are advised by a central council with a central office in London and by a local advisory committee appointed for each management district (g). The general object of the schemes is to conduct the supply of liquor in such a way as to meet the public demand under the best possible conditions and to assist in preventing excess and promoting sobriety. The methods employed comprise the closing of superfluous houses and the improvement of the remainder, the adoption of the principle of disinterested management and the provision of food and non-alcoholic refreshment in public houses (h). Of the two state management districts constituted in England in 1916, at Enfield Lock and Carlisle respectively, the properties acquired at Enfield Lock were sold in 1923, but the scheme at Carlisle still continues. The area of this scheme comprises the City of Carlisle and adjoining parts of the county of Cumberland extending to a total area of 320 square miles, and in it the sale of liquor is conducted as a state undertaking, the premises on which liquor is sold being vested in the Secretary of State (i). [198]

The local advisory committee comprises representatives of the licensing justices, the municipal and county authorities, the trades council and other local interests, and discusses questions of policy and administration. The services of such committee have been acknowledged as an important factor in the successful conduct of the scheme (k). The Royal Commission on Licensing (England and Wales) in 1930 considered evidence with regard to the Carlisle scheme, and expressed the view that a *prima facie* case of considerable strength had been made out in its favour (l). In their recommendations with regard to such schemes, the Royal Commission *inter alia* stated that they were in favour of the continuance of the Carlisle undertaking (m), and that it was desirable that public ownership should be applied elsewhere in cases which would subject the system to a further test both in a social and financial sense (n). [199]

(f) Licensing Act, 1921, ss. 16, 18 ; Third Schedule and Order of Secretary of State, November 29, 1921 ; S.R. & O., No. 182 ; Minutes of Evidence and Proceedings before Royal Commission on Licensing (England and Wales), p. 1000, para 19197 (13).

(g) Licensing Act, 1921, s. 16 (3) ; 9 Halsbury's Statutes 1063.

(h) Minutes of evidence of proceedings before Royal Commission on Licensing (England and Wales), p. 1001, para. 19197 (20).

(i) The premises comprise 2 hotels, 52 restaurants and public houses, and 5 off-sales establishments in the City of Carlisle and 7 hotels, 111 restaurants and public houses and one off-sale establishment in the remainder of the district. The brewery and the bottling and blending stores of the undertaking supply the liquor which is sold.

(k) Minutes of evidence of proceedings before Royal Commission on Licensing (England and Wales), p. 1001, para. 19197 (19).

(l) Report of Royal Commission on Licensing (England and Wales), 1929-1931, para. 416.

(m) *Ibid.*, para. 417.

(n) *Ibid.*, para. 418.

PUBLIC HOUSES, RATING OF

See RATING OF SPECIAL PROPERTIES.

PUBLIC LAVATORIES

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See also title : SANITARY CONVENIENCES.

Provision of Public Conveniences, including Lavatories.—The powers of a local authority to provide and maintain public sanitary conveniences are derived from the P.H.A., 1936 (*a*). A local authority (*b*) may provide (*c*) public sanitary conveniences in proper and convenient situations. The expression “sanitary convenience” is defined to mean closets and urinals (*d*), but for the purpose of sect. 87 includes lavatories (*e*). The consent of the county council (which may be given upon such terms as the council think fit) is necessary, however, to the provision of such conveniences in or under any highway or the site of a proposed new highway with respect to which the county council are or will be the highway authority (*f*). In the case of trunk roads the consent of the M. of T. is required instead of that of the county council (*ff*). A county council may themselves provide such conveniences in any situation in which they could not be provided except with their consent (*g*). [200]

Discretion of Authority.—The authority may provide the conveniences “in proper and convenient situations.” They have an absolute discretion in the exercise of their powers in choosing sites for public conveniences, and in the absence of evidence of bad faith or improper motives on the part of the authority this discretion cannot be interfered with (*h*). The authority are not, however, empowered to create a nuisance in the erection of a urinal or the like, and they will be restrained by injunction from so doing. In the absence of *mala fides*

(*a*) S. 87 ; 29 Halsbury's Statutes 390. This section replaces s. 39, P.H.A., 1875, part of s. 20, P.H.A., 1890, and s. 47, P.H.A., 1907.

(*b*) The expression “local authority” means the council of a borough, urban district or rural district ; ss. 1 (2) and 343 *ibid.* ; 29 Halsbury's Statutes 322, 536.

(*c*) For interpretation of the expression “provide,” see s. 271 ; 29 Halsbury's Statutes 497.

(*d*) S. 90 (1) ; 29 Halsbury's Statutes 392.

(*e*) S. 87 (4) ; *ibid.*, 390.

(*f*) S. 87 (1).

(*ff*) Trunk Roads Act, 1936, s. 6 (7) ; 29 Halsbury's Statutes 194.

(*g*) S. 87 (2).

(*h*) *Pethick v. Plymouth Corpn.* (1894), 70 L. T. 304 ; 38 Digest 233, 623 ; *Vernon v. Vestry of St. James, Westminster* (1880), 16 Ch. D. 449 ; 38 Digest 232, 620.

the onus of showing that a site selected is not proper and convenient is on the person complaining (*i*). Evidence that there are other sites more proper or more convenient is, however, irrelevant (*k*). It is no defence to an application for an injunction to prove that the sanitary condition of the immediate neighbourhood has been improved by the erection (*l*). The test to decide whether the convenience amounts to a nuisance is whether there is a material interference with the ordinary comfort and convenience of the adjoining owners in the enjoyment of their property (*m*) and not merely whether it may prove detrimental to the property (*n*). Mere proximity does not constitute a nuisance, but openings in the walls and roof of a urinal so that it was possible from the windows of the house to see persons entering and leaving the urinal just at the entrance have been held to be so (*o*). [201]

Public conveniences cannot be erected by the authority on private property, but only in places which are their property or under their control (*p*). As sect. 87 (1) authorises the construction of public conveniences and lavatories in proper and convenient situations and the proviso to the sub-section contemplates the provision of them in or under streets, it is submitted that in such a case it is unnecessary to obtain an order of the justices under sect. 84 *et seq.* of the Highway Act, 1835 (*q*), as these powers include the power of depriving the public of the right to traverse the highway to the extent of the encroachment (*r*), but as the soil of the street is not vested in the local authority it would appear that an authority desiring to place such constructions under streets must, if required, pay for the use of the sub-soil (*s*). [202]

A local authority may erect a public sanitary convenience on a site outside their own district (*t*). The site must, however, be proper and convenient, and the authority have no power to encroach upon a highway in an adjoining district. [203]

For a form of agreement between a local authority and a water company for a supply of water for public convenience, see 12 Ency. Forms—Form 231. [204]

Powers of Management.—The local authority who provide any public sanitary conveniences or lavatories may : (a) make bye-laws (*u*)

(*i*) *Vernon v. Vestry of St. James, Westminster* (1880), 16 Ch. D. 449 ; 38 Digest 232, 620 ; *Sellors v. Matlock Bath Local Board* (1885), 14 Q. B. D. 928 ; 38 Digest 232, 621 ; *Spicer v. Margate Corpn.* (1880), 24 Sol. Jo. 821 ; 38 Digest 233, 627 ; *Leyman v. Hessle U.D.C.* (1902), 67 J. P. 56 ; 38 Digest 233, 628.

(*k*) *Mason v. Wallasey Local Board* (1876), 58 J. P. 477.

(*l*) *Parish v. London (City) Corpn.* (1901), 18 T. L. R. 63 ; 67 J. P. 55 ; 38 Digest 233, 622.

(*m*) *Leyman v. Hessle U.D.C.*, *supra*.

(*n*) *Mayo v. Seaton U.D.C.* (1903), 68 J. P. 7 ; 38 Digest 233, 626.

(*o*) *Mudge v. Penge U.D.C.* (1916), 86 L. J. (Ch.) 126 ; 38 Digest 233, 629.

(*p*) *Vernon v. Vestry of St. James, Westminster*, *supra* ; *Sellors v. Matlock Bath Local Board*, *supra*.

(*q*) 9 Halsbury's Statutes 97.

(*r*) *Vernon v. Vestry of St. James, Westminster*, *supra*.

(*s*) See *Tunbridge Wells Corpn. v. Baird*, [1896] A. C. 434 ; 38 Digest 230, 607. Where a local authority acting *bona fide* and reasonably provide conveniences under a street with a subway it is no objection that the public can use the subway as a means of passing from one side of the street to the other (*Westminster Corpn. v. L. & N. W. Rail. Co.*, [1905] A. C. 426 ; 38 Digest 232, 616).

(*t*) S. 274 ; 29 Halsbury's Statutes 498. See also s. 271, enabling agreements between two authorities for the provision and use of such conveniences and services of staff.

(*u*) Bye-laws are made in manner provided by s. 250, L.G.A., 1933 ; 26 Halsbury's Statutes 440, and require confirmation by the Minister of Health (s. 312

as to the conduct of persons using or entering them; (b) let them for such term, at such rent and subject to such conditions as they think fit; and (c) charge such fees for the use of any such conveniences (other than urinals) and lavatories as they think fit (a). [205]

Borrowing.—Money may be borrowed for the purpose of the first construction, with the sanction of the M. of H., the period allowed by the Minister for repayment varying from ten years (for ordinary iron and slate structures) to thirty years (for substantial brick and underground conveniences) (b). [206]

Control over Public Conveniences in or Accessible from Streets (c).—No public sanitary convenience (the term does not here include lavatory) may be erected (d) in or accessible from any street without the consent (e) of the local authority, who may give such consent upon such terms as to the use thereof or its removal at any time if required by them, as they think fit. Contravention of these provisions renders the offender liable to a penalty of £5. Erections by railway companies (f) within their station or yard or approaches thereto, or by dock undertakers (g) in land belonging to them or used for their undertakings, are exempted (h). [207]

Any person aggrieved by the refusal of consent or by the terms imposed by the local authority may appeal to a court of summary jurisdiction (i).

The local authority may by notice (k) require (i.) the owner of any sanitary convenience erected in contravention of s. 88 (1), or the removal of which they are by virtue of the terms of consent entitled to require, to remove it; (ii.) the owner of a sanitary convenience which opens on to a street and is so placed or constructed as to be a nuisance or offensive to public decency, to remove or permanently close it (l).

The provisions of Part XII. as to appeals against and the enforcement of notices requiring the execution of works, apply in relation to any notice hereunder (m). [208]

Provision of Sanitary Conveniences at Inns and Refreshment Houses (n).—The local authority may by notice (o) require the owner

P.H.A., 1936; 29 Halsbury's Statutes 520). See P.H.A., 1936, s. 346, proviso (a), for saving of those already in force at the commencement of the Act. Model bye-laws No. XXVII., dated December, 1937, have been issued by the M. of H. on this subject (to be obtained from H.M. Stationery Office, price 2d.).

(a) P.H.A., 1936, s. 87 (3).

(b) L.G.A., 1933, Part IX., ss. 195 *et seq.*; 26 Halsbury's Statutes 412.

(c) P.H.A., 1936, s. 88. This section replaces s. 20 (2), (3), (4) of the P.H.A. Amendment Act, 1890, and s. 43 of P.H.A. Amendment Act, 1907.

(d) For "erect," see P.H.A., 1936, s. 90 (2).

(e) This must be in writing, s. 283 (1). For a form which may be adapted to the purpose, see 12 Ency. Forms, Form 402.

(f) For "railway companies," see s. 343 (1), *ibid.*

(g) For "dock undertakers," see s. 343 (1), *ibid.*

(h) S. 88 (1). For a saving clause as to building bye-laws in regard to statutory undertakings, see s. 71, *ibid.*

(i) S. 88 (2). As to appeals, see s. 300, *ibid.*

(k) This must be in writing, s. 283 (1). For a form which may be adapted to the purpose, see 12 Ency. Forms, Form 402. As to notices generally, see ss. 283 to 286, *ibid.*

(l) S. 88 (3).

(m) S. 88 (4). See s. 290, *ibid.* For appeal to a court of summary jurisdiction, see ss. 300—302, *ibid.*

(n) S. 89, *ibid.* This section replaces s. 44 of the P.H.A., 1907.

(o) This must be in writing, s. 283 (1). As to notices generally, see ss. 283 to 286, *ibid.*

or occupier of any inn, public house, refreshment house or place of public entertainment to provide and maintain in a suitable position such number of sanitary conveniences (this does not include lavatories) for the use of persons frequenting the premises (*p*) as may be reasonable (*q*). The penalty for non-compliance is £5 with a daily penalty for a continuing offence of 40s. (*r*). In any proceedings it is open to the defendant to question the reasonableness of the local authority's requirements or of their decision to address their notice to him and not to the occupier, or as the case may be, the owner of the premises (*s*). A duly authorised officer of a council has a right of entry on any premises at all reasonable hours for the purpose of the performance by the council of their functions under the Act (*t*). [209]

London.—The P.H. (London) Act, 1936, sects. 113—114, empowers sanitary authorities (City and metropolitan borough councils) to provide and maintain public lavatories. For the purpose of such provision the sub-soil of any street repairable by the inhabitants at large is vested in the sanitary authority. Persons to whom damage is caused by the exercise of these powers in relation to sub-soil may recover compensation from the sanitary authority. The authority may make regulations, let the lavatories for not exceeding three years and charge fees for their use. No public lavatory except conveniences erected by railway companies in a station yard or approach may be erected in or accessible from any street without the consent of the sanitary authority. Under sect. 116 the sanitary authority may require the removal of sanitary conveniences which are in or accessible from a street and are a nuisance or offensive to public decency. Sect. 115 empowers metropolitan borough councils to enter into agreements with each other and other local authorities for the provision of public lavatories on or near the boundaries of their districts. Sect. 117 empowers the L.C.C. to provide public lavatories, etc., on the Victoria Embankment to be maintained by the local sanitary authorities. The expenses of sanitary authorities are to be paid out of the general rate. The L.C.C. (General Powers) Act, 1935, sect. 42 (1) (*g*) (*u*), empowers the L.C.C. and metropolitan borough councils to provide in parks and open spaces lavatories and other conveniences. [210]

(*p*) For "premises," see s. 343 (1); 29 Halsbury's Statutes. 538.

(*q*) S. 89 (1).

(*r*) As to prosecution of offences, etc., see s. 296, *ibid*.

(*s*) S. 89 (2).

(*t*) S. 287.

(*u*) 28 Halsbury's Statutes 151.

PUBLIC LIBRARIES

See LIBRARIES.

PUBLIC MEETINGS

See TOWNS' MEETINGS.

PUBLIC PARKS

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See also titles :

BYE-LAWS ;	OFFICE OF WORKS ;
COMMONS ;	OFFENSIVE BEHAVIOUR ;
ENTERTAINMENTS, PROVISION OF ;	OFFICERS ;
GAMES, PROVISION FOR ;	OPEN SPACES
LAKES IN PLEASURE GROUNDS ;	

Introduction.—Although several local Acts in the early part of the nineteenth century contained provisions for forming public parks, the first general Act to do so was the Towns Improvement Clauses Act, 1847. By sect. 135 of that Act (*a*), commissioners were empowered by special order to purchase, rent or otherwise provide lands, grounds or other places in their area, or within three miles distance, to be used as a pleasure ground or place of public resort or recreation. The section applies only where incorporated in a “special Act” (sect. 1). [211]

Provision of Public Parks.—Public parks have generally been, and are still being, provided by local authorities under sect. 164 of the P.H.A., 1875 (*b*). By that section urban authorities are empowered to purchase or take on lease, lay out, plant, improve and maintain lands for the purpose of being used as public walks or pleasure grounds, and to support or contribute to the support of such grounds provided by other persons. By sect. 276 of the same Act (*c*), the Minister of Health may by order apply these powers to a R.D.C., and this has been done by the Rural District Councils (Urban Powers) Order, 1931 (*d*). By sect. 8 (1) (*b*) of the L.G.A., 1894 (*e*), parish councils were empowered to provide or acquire lands for recreation grounds and for public walks, and to execute works (including works of maintenance or improvement) incidental to the exercise of this power.

County councils, by sect. 14 of the Open Spaces Act, 1906 (*f*), may purchase or take on lease, lay out, plant, improve and maintain land for the purpose of being used as public walks and pleasure grounds, and may contribute to those provided by other persons. [212]

By sect. 11 and Sched. II. of the Town and Country Planning Act, 1932 (*g*), one of the matters to be dealt with by town planning schemes is the provision of open spaces, private and public, as described in the title on OPEN SPACES, and provision may be made in local Acts for their purchase or other acquisition.

(*a*) 13 Halsbury's Statutes 576.
 (*c*) *Ibid.*, 741.
 (*e*) 10 Halsbury's Statutes 780.
 (*g*) 25 Halsbury's Statutes 484, 528.

(*b*) *Ibid.*, 693.
 (*d*) 24 Halsbury's Statutes 262.
 (*f*) 12 Halsbury's Statutes 389.

By sect. 268 of the L.G.A., 1933 (*h*), all local authorities may accept a gift of real property, and may expend money in maintaining it. Its maintenance would of course be subject to any deed of gift. By the National Trust Act, 1937, local authorities with the consent of the Minister of Health may give to the Trust land or buildings or money for the purchase and preservation of land.

Where land is compulsorily acquired, the procedure is according to that laid down in the L.G.A., 1933 (*i*). It is usually set out in any Act which allows the compulsory purchase of land that this should not include any public park (*k*). [213]

Management.—By sect. 164 of the P.H.A., 1875 (*l*), urban authorities may make bye-laws for the regulation of any of their public walks or pleasure grounds, and may provide in the bye-laws for the removal of any person infringing the bye-laws by any of their officers or by a constable. The same powers are given to the other authorities providing public parks in the statutes mentioned above.

The duties of the local authorities in regard to accidents is dealt with in the title OPEN SPACES, and for the provision of games see the title GAMES, PROVISION FOR. The Minister of Health has issued model bye-laws in regard to public parks (*m*). Such bye-laws are to be made as set out in sects. 250—252 of the L.G.A., 1933 (*n*).

Special powers as to public parks are given in sect. 76 of the P.H.A. Amendment Act, 1907 (*o*), and sect. 56 of the P.H.A., 1925 (*p*). This enables them to set apart a portion for games, skating, etc. (*q*), to provide music, concerts and entertainments (*r*), reading-rooms and pavilions, and refreshments. [214]

Officers.—By sect. 77 of the P.H.A. Amendment Act, 1907 (*s*), local authorities may appoint officers for the management of their public parks and these may be sworn in as constables for that purpose, but they may not act as constables unless in uniform or provided with a warrant (*t*). [215]

Advertisements.—One of the reasons for which bye-laws may be made under the Advertisements Regulation Act, 1907 (*u*), is to regulate or prevent the exhibiting of advertisements which affect injuriously the amenities of a public park or pleasure promenade. [216]

London.—See title OPEN SPACES.

(*h*) 26 Halsbury's Statutes 449.

(*i*) Ss. 159—162, 168; 26 Halsbury's Statutes 392-6, 398.

(*k*) *E.g.* Land Settlement (Facilities) Act, 1919, s. 28; Allotments Act, 1922, s. 10(6)(b); 1 Halsbury's Statutes 298, 310; Housing Act, 1936, s. 75; 29 Halsbury's Statutes 622.

(*l*) 13 Halsbury's Statutes 693.

(*m*) See title MODEL BYE-LAWS, Vol. IX., p. 241.

(*n*) 26 Halsbury's Statutes 440—442. See title BYE-LAWS, Vol. II., p. 359.

(*o*) 13 Halsbury's Statutes 938.

(*p*) *Ibid.*, 1139.

(*q*) See titles GAMES, PROVISION FOR, Vol. VI., p. 152; SKATING.

(*r*) See title ENTERTAINMENTS, PROVISION OF, Vol. V., p. 369.

(*s*) 13 Halsbury's Statutes 939.

(*t*) As to status, etc., of these officers, see title STAFF.

(*u*) S. 2 (2); 13 Halsbury's Statutes 908.

PUBLIC SERVICE VEHICLES

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PUBLIC SERVICE VEHICLE LICENCES	94		

See also titles : OMNIBUSES OF LOCAL AUTHORITIES ;
ROAD TRAFFIC ;
TRAFFIC COMMISSIONERS.

Definitions.—A motor vehicle which is used for carrying passengers for hire or reward is a public service vehicle unless it is (i.) a contract carriage as defined by the Road Traffic Act, 1930, and (ii.) adapted to carry less than eight passengers (a). To be a contract carriage it must carry passengers only under a contract, express or implied, for the use of the vehicle as a whole at or for a fixed or agreed rate or sum (b). A vehicle adapted to carry less than eight people does not become a stage carriage only by reason of the fact that the passengers pay separate fares, provided certain conditions are fulfilled (c).

For the purposes of Part IV. of the Act, public service vehicles are divided into three classes, *i.e.* "stage," "express" or "contract" carriages. Every public service vehicle is a stage carriage unless it falls into one of the other two categories. To be an express carriage it must carry only for fares of one shilling or such higher sum as the Minister may fix, but there are certain reservations as to children and workmen (d). It is a contract carriage if it is taken by contract as a whole : but even if taken by somebody as a whole, *e.g.* by the secretary of a football club, it falls out of the category of contract carriage if anybody may travel in it for a fare or, it seems, even if members of the club only (and not the public at large) may so travel (e). Vehicles adapted to carry less than eight passengers may ply for separate fares on special occasions such as race meetings or public gatherings without becoming stage or express carriages. All vehicles may do so on other occasions provided they carry only private parties and that certain

(a) Road Traffic Act, 1930, s. 121 ; 23 Halsbury's Statutes 686. Tramcars and trolley vehicles are excluded.

(b) *Ibid.*, s. 61 (1) (c).

(c) Road Traffic Act, 1937, s. 1 ; 30 Halsbury's Statutes 819.

(d) Road Traffic Act, 1930, s. 61 (1) (b) ; 23 Halsbury's Statutes 655, as amended by Road Traffic Act, 1934, s. 24 ; 27 Halsbury's Statutes 553.

(e) See *Osborne v. Richards*, [1933] 1 K. B. 283 ; Digest (Supp.) ; *Birmingham and Midland Motor Omnibus Co., Ltd. v. Nelson*, [1933] 1 K. B. 188 ; Digest (Supp.) ; *Westminster Coaching Services v. Piddlesden* (1933), 149 L. T. 449 ; Digest (Supp.) ; *Drew v. Dingle*, [1934] 1 K. B. 187 ; Digest (Supp.) ; and the other cases cited in Mahaffy and Dodson, Road Traffic Acts and Orders (1936), pp. 109—112.

conditions imposed by the Road Traffic Act, 1934, are fulfilled (*f*). [217]

Construction and Equipment.—All public service vehicles must comply with the Construction and Use Regulations, 1937 (*g*), and must also fulfil all the requirements of the Conditions of Fitness Regulations of March 3, 1936, and the Equipment and Use Regulations of July 4, 1931 (*h*). The code contained in these three sets of regulations is elaborate and cannot be given in detail. [218]

Public Service Vehicle Licence.—Provided that a vehicle complies with all of the aforesaid regulations the owner is entitled to receive for it a licence, authorising him to use it as a public service vehicle (Road Traffic Act, 1930, ss. 63, 67). The licence is given by the traffic commissioner (sect. 63). It is a licence to the vehicle to carry passengers either as a stage or as an express or as a contract carriage. The holder of a stage carriage licence may use the authorised vehicle as a contract carriage or, subject to certain conditions, as an express carriage. The holder of an express carriage licence may use it on a service of stage carriages as such if the traffic commissioners in special circumstances consent (sect. 67). The holder of a public service vehicle licence which is for use of a vehicle as a contract carriage may never, however, while he is using it under that licence change its character. The applicant for a public service vehicle licence must, before he applies, obtain for his vehicle or vehicles a certificate of fitness from the certifying officer (sect. 68) (*i*), appointed by the Minister of Transport (sect. 69 (1)). These officers are appointed by the Minister for each traffic area, but are not, it seems, servants of the commissioners. An appeal against the refusal of a certificate lies not to the commissioners but to the Minister (*k*). The Minister also appoints public service vehicle examiners (sect. 69 (2)). They and the certifying officers have the power of inspecting vehicles, and may stop them *en route* for that purpose; and they may enter premises where they have reason to believe that such vehicles are kept. They have power to suspend vehicles which are unfit; but may mitigate the suspension if they think that the defects which they observe may be remedied in a short time (*l*). Certificates may be granted to vehicles which conform to a type which has been approved by the Minister of Transport (*m*). [219]

Road Service Licences (*n*).—A road service licence is a licence granted by the traffic commissioners to "any person," not necessarily a vehicle-owner, authorising him to supply such a service as may be

(*f*) See Road Traffic Act, 1930, s. 61 (2); 23 Halsbury's Statutes 655, and Road Traffic Act, 1934, s. 25; 27 Halsbury's Statutes 554, passed to mitigate the results of *Miller v. Pill*, [1933] 2 K. B. 308; Digest (Supp.). See also the Road Traffic Act, 1937; 30 Halsbury's Statutes 819.

(*g*) See title ROAD TRAFFIC.

(*h*) See for these three sets of Regulations as re-edited or amended, Mahaffy (*op. cit.*), pp. 401, 421, and *ibid.*, Supp. (1937), pp. 26, 32, 39, 41, 93, 97.

(*i*) See title ROAD OFFICERS.

(*k*) Road Traffic Act, 1930, s. 81 (1) (*e*); 23 Halsbury's Statutes 667.

(*l*) *Ibid.*, s. 71; 23 Halsbury's Statutes 661. See also title ROAD OFFICERS.

(*m*) *Ibid.*, s. 68 (5) and for full details, see the Licences and Certificate Regs. of November 19, 1934 (S. R. & O., 1934, No. 1269); Mahaffy (*op. cit.*), p. 613; No. 1269, Mahaffy and Dodson (1936), pp. 613 *et seq.* See also title TRAFFIC COMMISSIONERS.

(*n*) The whole law on this matter is contained in Road Traffic Act, 1930, ss. 72—76; 23 Halsbury's Statutes 661—665, and in Part VII. of S.R. & O., 1934, No. 1269 (see note (*m*), *supra*), and see also title TRAFFIC COMMISSIONERS.

specified therein (o). Only the holder of the licence can lawfully use the vehicle in this way—unless the commissioners give special leave (p). In exercising their discretion the commissioners are compelled to have regard to certain matters, such as the “suitability of the proposed routes” and the needs of the area as a whole, and are further empowered to attach conditions providing for reasonable fares, preventing wasteful competition and fixing points of stoppage (q). Applicants for these licences must declare the types of vehicles which they propose to use, show their time and fare tables and give any other particulars which the commissioners require. The commissioners may fix fares, but must have regard to any fares fixed under other Acts (r). Public service vehicles which are running under a private Act must have road service licences. Licences granted in one traffic area are not valid in another (s), unless backed by the commissioners in the second area. These have a discretion, on endorsement, to impose the statutory conditions or truncate the licence (t). Road service licences may be revoked or suspended if the conditions attached to them are broken (u). Licence holders must keep records and accounts and send them as required to the Minister of Transport. They must also inform the commissioners of any agreement or arrangement they have with other public service vehicle services and of any “combines” into which they enter with those who run them (a). [220]

Drivers and Conductors (b).—In addition to the ordinary driver's licence, drivers of public service vehicles, and also their conductors, must have a special licence. This is granted generally by the traffic commissioners, but residents in the London Passenger Transport Area obtain them from the Commissioner of Metropolitan Police. Drivers must be over twenty-one; conductors over eighteen; and a licence of this kind may be limited to the driving of one or other of the three classes of public service vehicles. The traffic commissioners, and, it may be assumed, the Commissioner of the Metropolitan Police, have the right to revoke these licences for misconduct or physical disability. They last for three years unless sooner revoked (c). There is an appeal against refusal of licence, or suspension, to the magistrates (d). The Minister is empowered to make regulations as to the conduct of drivers and conductors, and has done so (dd). Conviction for offences against these may be recorded by endorsement on the licence, which must be

(o) Road Traffic Act, 1930, s. 72 (1); 23 Halsbury's Statutes 661.

(p) *Ibid.*, s. 72 (2); Road Traffic Act, 1934, Sched. III.; 27 Halsbury's Statutes 568.

(q) Road Traffic Act, 1930, s. 72 (3), (4).

(r) *Ibid.*, s. 72 (5), (6), (7).

(s) See, however, the exceptional “corridor area” provision in Road Traffic Act, 1934, s. 28; 27 Halsbury's Statutes 556.

(t) Road Traffic Act, 1930, s. 73; *R. (Galley) v. Yorkshire Traffic Commissioners*, reported Mahaffy (1936), p. 131, followed and applied, *R. v. Minister of Transport, Ex parte Valliant Direct Coaches, Ltd.*, [1937] 1 All E. R. 264.

(u) *Ibid.*, s. 74.

(a) *Ibid.*, ss. 75, 76. As to the details prescribed for issue of road service licences, see Part VII. of S.R. & O., 1934, No. 1269 (Mahaffy (*op. cit.*), p. 622) and title TRAFFIC COMMISSIONERS.

(b) For the substance of this section, see *ibid.*, s. 77; 23 Halsbury's Statutes 665; London Passenger Transport Act, 1933, s. 51; 26 Halsbury's Statutes 796 (S.R. & O., 1933, No. 628; Mahaffy (*op. cit.*), pp. 134, 159, 479), and the notes below.

(c) Road Traffic Act, 1930, s. 80 (1) (a); Road Traffic Act, 1934, Sched. III.

(d) Road Traffic Act, 1930, s. 82.

(dd) *Ibid.*, s. 85; S.R. & O. 1936, No. 319 (Mahaffy, Supp. 1937, p. 26).

produced if the court so requires (e). The regulations last mentioned contain also rules as to the conduct of passengers which may be enforced, by removal if necessary, by the police (f). [221]

(e) Road Traffic Act, 1930, s. 85 (S.R. & O., 1936, No. 619; Mahaffy (Supp. 1937), p. 26).

(f) *Ibid.*, Art. 12 (a); Mahaffy (Supp. 1937), p. 30; for power to authorise removal, see Road Traffic Act, 1930, s. 84.

PUBLIC SLAUGHTERHOUSES

See SLAUGHTERHOUSES AND KNACKERS' YARDS.

PUBLIC UTILITY SOCIETIES

See HOUSING ASSOCIATIONS.

PUBLIC UTILITY UNDERTAKINGS

See ELECTRICITY SUPPLY; GAS; TRAMWAYS; WATER SUPPLY.

PUBLIC WORKS LOANS ACTS

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See also titles : BORROWING;
LOCAL LOANS;
TREASURY.

Acts of Parliament.—The making of advances of public moneys for the furtherance of public works of local interest which was first organised by the Public Works Loans Act, 1817, is now regulated by the Public Works Loans Acts, 1875–1898 (a), the principal Act being the Act of

1875 which consolidated and amended previous enactments. These Acts are supplemented by a series of annual Acts placing certain sums at the disposal of the Public Works Loans Commissioners for the purpose of advances, appointing Commissioners when necessary, and authorising the remission, in full or in part, of interest or capital or both, to debtors unable to meet their engagements. The latter series of Acts are mainly administrative. In addition to the Acts of 1875-1898, reference should be made to the National Debt and Local Loans Act, 1887 (*b*), which provides for the issue of funds by the National Debt Commissioners to the Public Works Loans Commissioners for the purposes of local loans. [222]

Objects of Loans.—Any body or person having power under an Act of Parliament or otherwise to borrow for any of the following purposes may apply to the Public Works Loans Commissioners for a loan in connection therewith (*c*): baths and washhouses; burial grounds; conservation or improvement of rivers or main (including underground) drainage; docks, harbours, piers and any work for which the commissioners are authorised to lend under the Harbours and Passing Tolls, etc., Act, 1861; improvement of towns; labourers' dwellings; light-houses and floating and other lights for the guidance of ships; buoys and beacons; lunatic asylums; police stations and justices' rooms; prisons; public libraries and museums; schoolhouses and works for which an Education Authority is authorised to borrow under the Education Acts; waterworks established or carried on by a sanitary or other local authority; workhouses and poorhouses; works for which a sanitary authority is authorised to borrow under the P.H.As. The following objects were added by subsequent legislation: any work for which county, borough, district or parish councils may borrow (*d*); construction or improvement of canals (*d*); military lands (*e*); loans on the security of the Mercantile Marine Fund (*e*); acquisition of land and buildings for Territorial Army purposes (*f*).

Special legislation has also provided that the Commissioners may make advances in connection with the purposes thereof viz.:—allotments (*g*); diseases of animals (*h*); higher education (*i*); housing of rural workers (*k*); land drainage (*l*); small dwellings (*m*); small holdings (*n*) and housing (*o*). [223]

Conditions of Loans.—The Commissioners are directed by sect. 9 of the Act of 1875 (*p*) to have two things in view in considering the

(*b*) 12 Halsbury's Statutes 282.

(*c*) Public Works Loans Act, 1875, s. 9; 12 Halsbury's Statutes 258; Sched. I.; *ibid.*, 273.

(*d*) Public Works Loans Act, 1896, s. 2; 12 Halsbury's Statutes 295.

(*e*) Public Works Loans Act, 1897, s. 11; *ibid.*, 298.

(*f*) Public Works Loans Act, 1908, s. 6; *ibid.*, 302.

(*g*) Small Holdings and Allotments Act, 1908, s. 52 (2); Allotments Act, 1922, s. 18; 1 Halsbury's Statutes 275, 314; L.G.A., 1933, s. 198, Sched. VIII.; 26 Halsbury's Statutes 414, 510.

(*h*) Diseases of Animals Act, 1894; 1 Halsbury's Statutes 389; see *ibid.*, s. 42 (4); *ibid.*, 411.

(*i*) Education (Administrative Provisions) Act, 1907, s. 8; 7 Halsbury's Statutes 127.

(*k*) Under the various Acts dealing with the matter.

(*l*) Land Drainage Act, 1930, s. 32.

(*m*) Small Dwellings Acquisition Act, 1899, s. 9 (7).

(*n*) Under the various Acts in the matter.

(*o*) Housing Acts, 1925-1936.

(*p*) 12 Halsbury's Statutes 258.

propriety of granting a loan ; (i.) the sufficiency of the security offered ; and (ii.) whether the proposed work would be of such benefit to the public as to justify a loan out of public money, having regard to the amount placed at their disposal by Parliament. The loans must be repayable, in the form of an annuity or otherwise, within the period fixed by any special Act, or (if no time is thus fixed) within twenty years or such extended period as the Treasury allow (sect. 11). If the time agreed is less than the full period allowed by law, the Commissioners may extend it to the full period. The Treasury and the Commissioners are directed to have regard, in dealing with an extension, to the durability of the work and to the expediency of the cost of the work being paid by the generation of persons who will immediately benefit by such work (*ibid.*). The first instalment for repayment must be made payable within a period not exceeding five years from the date of the advance (*ibid.*). [224]

Interest.—When a loan is granted for the purposes of a special Act which authorises the borrower to borrow for the purposes thereof, the interest to be charged shall be that, if any, mentioned in the special Act. If no rate is mentioned, the Public Works Loans Act, 1892 (*q*), fixes the minimum rate at 4 per cent. If the aggregate amount due by a harbour authority for loans under the Harbours and Passing Tolls Act, 1861, exceeds £100,000, the minimum rate on the excess shall be $3\frac{1}{2}$ per cent. (*r*). Collaterally secured loans for canal work are to be at the rate of $3\frac{1}{4}$ per cent. (*s*). When loans are made on the security of local rates, the rate of interest may be fixed by the Treasury from time to time, having regard to the duration of the loans and shall be such, being not less than $2\frac{3}{4}$ per cent., as the Treasury deem sufficient to enable such loans to be made without loss to the Local Loans Fund (*t*). Sect. 4 of the Public Works Loans Act, 1917, directed that these provisions “shall apply to a loan made out of the local loans fund otherwise than on the security of local rates as they apply to a loan made out of that fund on such security,” and sect. 4 of the Public Works Loans Act, 1918, explained in this connection that the power of the Treasury includes “a power to fix rates of interest” (for loans otherwise than on the security of local rates) “differing from the rates fixed for loans made on the security of local rates, and a power to fix different rates of interest in respect of different loans, and that in fixing the rate of interest, the Treasury may take into account the nature and value of the security for the loan” (*tt*). Under the Housing Act, 1936, the minimum rate of interest is fixed at £3 2s. 6d. per cent. (*u*). [225]

The Public Works Loan Commissioners. *Constitution.*—The Commissioners are appointed by Act of Parliament and hold office for five years or for the period authorised by the Act appointing them. They may not receive any salary, fee or emolument in respect of their services. When a vacancy occurs through death or declining to act or further to act, the remaining Commissioners, or a majority of them, may appoint under their hands and seals, with the concurrence of the Treasury, a Commissioner who holds office for the period during which

(*q*) S. 2 ; 12 Halsbury's Statutes 298.

(*r*) Public Works Loans Act, 1875, s. 10 ; 12 Halsbury's Statutes 258.

(*s*) Public Works Loans Act, 1896, s. 2 ; *ibid.*, 295.

(*t*) Public Works Loans Act, 1897, s. 1 ; *ibid.*, 296.

(*tt*) The present rates of interest are laid down in the Treasury Minute of 29 December, 1938 (S.R. & O. 1938, No. 1579).

(*u*) S. 92 (7) ; 29 Halsbury's Statutes 635.

the Commissioner in whose place he is appointed would have held office. If at the expiration of their period of appointment Parliament has not appointed new Commissioners, they hold office until their successors are appointed but may not grant any new loan in the interval (a). [226]

Powers and Duties.—The Commissioners act through their secretary, in whose name all legal documents relating to loans are as a rule drawn up, and all actions by or against the Commissioners are taken or defended. In case of death, resignation or removal of the secretary, all property which was vested in him by virtue of his office vests in his successor by operation of the Act. In legal proceedings, the secretary is deemed to represent the Crown and it is not necessary to make the Crown or any other person on behalf of the Crown a party to the proceedings (b).

The Commissioners have power to examine witnesses upon oath and any person examined by them who wilfully gives false information for the purpose of obtaining a loan shall be guilty of perjury (sect. 5 (2) and s. 44). They have to report annually to the Treasury on their transactions during the year and to give the prescribed particulars respecting moneys issued to them and loans granted by them during the period (sect. 5 (3)). The secretary and staff and all expenses incurred by the Commissioners in the execution of their duties are paid out of moneys provided by Parliament (sect. 6). When a loan has been granted it is the duty of the M. of H. to satisfy themselves that the loan is applied to the purposes for which it was granted, and they may appoint inspectors for the purpose and take measures to insure fulfilment of borrowers' obligations (c). [227]

Charges upon property for the purpose of obtaining loans from the Commissioners have priority over any other debt, loan or charge save as specified in the charge. If the borrower's property is already charged in favour of more than one creditor, and creditors for not less than four-fifths in value consent in writing to priority being given to the Commissioners, this consent will be sufficient to bind all the creditors, those who have not agreed as well as those who have agreed (d).

If a loan is upon the security of a rate and the money has been expended upon the work or for the benefit of the locality intended, no defect of power or title of the borrower to levy the rate can be set up against the Commissioners who in such a case have power to levy the rate necessary to secure the repayment of the loan (sect. 19). The Commissioners are empowered to accept any security in lieu of any security previously given in respect of a loan, but so that the substituted security shall be of the character which they might take if the loan were granted at the time of the substitution (sect. 38). The Treasury may also, upon their recommendation, postpone for any time not exceeding five years the payment of instalments on a loan (sect. 37). Any sum payable in respect of a loan or under the security for such loan may be compounded for or released only under the authority of Parliament in each case (sect. 33). Authority for the writing off from the assets of the local loans fund of sums in respect of principal or interest or both which have become irrecoverable is given in the annual

(a) Public Works Loans Act, 1875, s. 4; 12 Halsbury's Statutes 255. See Public Works Loans Act, 1935, s. 1, appointing commissioners for five years from April 1, 1936.

(b) Public Works Loans Act, 1875, s. 7; 12 Halsbury's Statutes 257.

(c) *Ibid.*, s. 36, and Public Works Loans Act, 1878, s. 4; *ibid.*, 268, 276.

(d) Public Works Loans Act, 1875, s. 18; *ibid.*, 261.

Public Works Loans Acts, the Schedule to the Act, in such cases, showing the name of the borrower, the amount of the loan and the amount written off. [228]

Borrowers in default.—When a mortgage has been given to the Commissioners as security for a loan and default is made in payment by the borrower, the Commissioners may, at any time after default and without any consent of persons interested in the equity of redemption, (i.) take possession of the mortgaged property or any part thereof; (ii.) grant any lease of the mortgaged property or any part thereof; (iii.) sell or mortgage the mortgaged property or any part thereof (e).

When the loan is secured by the mortgage of a rate, the Commissioners, on default by the rating authority, may, on giving notice, make and levy the rate necessary for the payment of the sum due with expenses (sect. 23).

In case of bankruptcy or winding up of a borrower or of his surety, the loan becomes repayable at once, subject, in case of bankruptcy or winding up of the surety, to the power of the Commissioners to accept some other surety in substitution (sect. 31).

Loans on personal security are recoverable against the guarantor as a specialty debt to the Crown (sect. 33).

The expiration of the period within which a loan is made repayable does not affect the powers of the Commissioners to recover such loan or enforce payment of any sum due in respect thereof (sect. 34).

[229]

Housing Loans.—Loans for the purposes of the Housing Acts form the most important single item of advances by the Commissioners, ranging between one-half and two-thirds of the yearly total of advances. The conditions of such loans are regulated by the Housing Act, 1936; they vary according to whether the borrower is a local authority or a company, body or person authorised under the Act. [230]

Local Authorities.—By sects. 90 and 91 of the Act (f) local authorities are empowered to make advances for the improvement and increase of housing accommodation and to guarantee the repayment to building societies of advances, with interest thereon, made by such societies to any of their members to enable them to build or acquire houses—in the latter case, the houses must have been commenced after April 25, 1923, or, within the County of London, after July 31, 1919. No advance or guarantee can be made under the latter section if the value of the fee simple of the house, free from incumbrances, is estimated to exceed £800. Advances are to be secured by mortgage and are not to exceed 90 per cent. of the mortgagor's interest in the property.

By sect. 123, the Public Works Loans Commissioners are empowered to lend to any local authority or county council any money which that authority or council may borrow for the purposes of making advances or fulfilling guarantees under sect. 91. Loans made to such authorities or councils or to mental hospital boards for the provision of houses for employees or for the purposes of sect. 91 of the Act, must be at the minimum rate allowed for the time being for loans out of the Local Loans Fund; the period may exceed that allowed by existing enactments but shall not exceed eighty years, and the longer duration of the loan shall not be a reason for fixing a higher rate of interest. [231]

(e) Public Works Loans Act, 1875, s. 21; 12 Halsbury's Statutes 262.

(f) Housing Act, 1936; 29 Halsbury's Statutes 631.

Companies, bodies or persons.—Under sect. 92 of the Act (g), the Commissioners may make direct loans to persons or bodies specified therein, for the purpose of the increase or improvement of working-class housing accommodation.

The persons authorised are : railway companies ; dock or harbour companies ; companies, societies or associations established for the purposes of constructing or improving or facilitating or encouraging the construction or improvement of houses for the working classes ; trading or manufacturing concerns in the course of whose business, or in the discharge of whose duties, persons of the working classes are employed ; any persons entitled to land for an estate in fee simple absolute in possession, or for a term of years absolute of which not less than fifty years remain unexpired.

The loan may be made whether the borrower has or has not power to borrow independently of the Act—unless the borrower is a company restricted by its articles from borrowing until a definite portion of its capital is subscribed. The loan must be secured by a mortgage of the property, the period of repayment not to exceed forty years, except in the case of a loan to a housing association for carrying out a scheme approved by the Minister of Health for the provision of working-class dwellings, when the period may be extended to fifty years. The proportion of the amount advanced to the value of the property shall not exceed in the case of a housing association nine-tenths, and in other cases three-quarters, but in the latter cases, if a loan of more than two-thirds of the estimated value is required, the Commissioners must require such further security as they think fit in addition to the mortgage. [232]

Use of the Commissioners' facilities.—The Annual Report of the Commissioners for 1936–37 shows a total of advances for housing purposes to March 31, 1937, as follows :

To local authorities on the security of local rates	—	£242,525,912
To other bodies or persons	— — — — —	£13,188,486

The advances made in the year ending March 31, 1937, were as follows :

To local authorities—	— — — — —	£9,505,167
To other bodies or persons	— — — — —	£33,099

[233]

Public Works Facilities Act, 1930.—This Act, which was passed for the purpose of expediting public works contributing to the relief of unemployment, has been so far continued in part by various Expiring Laws Continuance Acts, and has been found most useful by local authorities in facilitating and expediting the process of compulsory acquisition of land. It is expressed to be “in addition to and not in derogation of any other powers conferred by any other Act” (h). It could formerly be made use of by local authorities and by statutory undertakers, but since the Expiring Laws Continuance Act, 1936 (see Sched. I., Part I.), its use is limited to public authorities. [234]

Objects.—The objects for which the Act may be brought into use include : (i) any purpose for which a local authority could be authorised to acquire land compulsorily under any enactment in force before the commencement of the Act ; the provision of open spaces by metropolitan

(g) Housing Act, 1936 ; 29 Halsbury's Statutes 634.

(h) Public Works Facilities Act, 1930, s. 8 (3) ; 23 Halsbury's Statutes 776.

(i) *Ibid.*, Sched. I., Part I.

borough councils ; the provision of buildings by municipal corporations under the Municipal Corporations Act, 1882. [235]

Procedure.—(k) The procedure is by means of a compulsory purchase order by the local authority, made in the form in Appendix B. to Circular 1141 of the M. of H. of August 22, 1930. In the table attached to the form, particulars are required to be given of the “ quantity, description and situation ” of the land required to be acquired. The clerk to the local authority must make a statutory declaration in the form in Appendix A. to the same circular. Notice of the scheme must be served, before the order is made, upon all parties who would have been entitled to such notice upon application for a private Bill. The order becomes effective on confirmation by the appropriate Ministry. If objection is made and not withdrawn within the period specified in the notice, the Minister must direct a public local inquiry to be held, unless he is satisfied that the objection relates exclusively to matters which can be dealt with by the arbitrator by whom compensation is to be assessed. [236]

Restrictions.—The Act does not authorise the compulsory acquisition of any land which is the property of any local authority or has been acquired by any statutory undertakers for the purposes of their undertaking (l), and restrictions are also imposed on the acquisition of commons, open spaces and certain other lands (m). [237]

Power of entry.—After confirmation of the order, the local authority may, after service of the notice to treat and on giving the owner or occupier fourteen days’ notice, take possession of the land without previous consent or compliance with sects. 84—90 of the Lands Clauses Consolidation Act, 1845 (n) (which require payment of compensation before entering upon land), but subject to the payment of such compensation as would have been payable if the said provisions had been complied with. [238]

Electricity Commissioners.—The Act (o) also enables the Minister of Transport to confirm a special order of the Electricity Commissioners without complying with sect. 35 (2) of the Electricity (Supply) Act, 1919, and the Schedule to that Act (p), if he is satisfied that sufficient notice of the order has been given and that there are no unwithdrawn objections except such as, in his opinion, are frivolous or have been removed by amendments made to the order. Such orders, however, have to be laid before Parliament after confirmation, as required by the Electricity (Supply) Acts. [239]

(k) See Public Works Facilities Act, 1930, Sched. I., Part II ; 23 Halsbury’s Statutes 777.

(l) *Ibid.*, s. 3 ; *ibid.*, 774.

(m) *Ibid.*, s. 2.

(n) 2 Halsbury’s Statutes 1142—5.

(o) Public Works Facilities Act, 1930, s. 5 ; 23 Halsbury’s Statutes 775.

(p) 7 Halsbury’s Statutes 775, 778.

PUBLICITY OFFICER

The appointment of a publicity officer or, as he is sometimes called, an advertising manager by a local authority is an innovation introduced by Blackpool in the latter part of the last century. The councils of all the leading seaside and other health resorts of England and Wales now appoint such an officer, and it is also their practice to appoint annually a publicity or an advertising committee "to have the general management and control of all matters connected with the advertising of the town," of which committee the publicity officer is the executive officer. The committee is subject to the same standing orders as other committees of the council and its proceedings are subject to confirmation by the council.

Each February, the publicity committee prepares an estimate of its expenditure during the forthcoming financial year commencing April 1, and submits it to the finance committee of the council for consideration at the same time as the estimates of other committees are considered. There is an understanding that after the estimate has been approved by the council the committee has power to spend money on the items in the estimate, such as salaries, publication of official guide books, printing and exhibition of posters, and advertising in newspapers and periodicals, up to but not exceeding the respective amounts included in the estimates.

The publicity officer is appointed by resolution of the council in the same manner as other officials, the tenure of office being subject to reasonable notice (say three months) by either party to terminate the appointment.

The publicity officer must be a man of initiative, able to prepare new schemes for publishing the attractions of his town and competent to advise his committee on all advertising matters. His principal duties (which his qualifications should enable him to carry out without supervision) are :

- (1) To submit to the publicity committee proposals for advertising the town by posters.
- (2) The insertion of advertisements in the national press.
- (3) The compilation of the official guide and other brochures and the distribution thereof.
- (4) To invite associations and institutions to hold their annual conferences in his town and to assist in the arrangements for any such conferences.
- (5) To take charge of the information bureau.
- (6) To act as minute clerk to the publicity committee, conduct the correspondence arising out of the minutes and carry out the committee's orders with respect to advertising.

The busy periods of the year for the publicity manager are spring and summer. In the spring people are naturally asking themselves "Where are we going to spend our summer holiday?" To assist them they refer to the official advertisements in the leading newspapers and then, probably, obtain from the publicity managers

of several towns the official guide setting forth the various attractions and other useful information relating to the respective resorts. There is little doubt that a well prepared and attractively presented guide can have a material influence on the seasonal influx to a holiday resort. [240]

By the Health Resorts and Watering Places Act, 1936 (a), the council of any borough or urban district may advertise within the British Isles the advantages and amenities of the borough or district as a health resort or watering place. For that purpose combination with any other local authority, organisation, company or person is permitted. In any one financial year the product of a penny-and-a-third rate may be expended. The council may not advertise in a newspaper published within the borough or district. [241]

London.—The L.C.C. (General Powers) Act, 1936, s. 44 (b), empowers the council, for the purpose of giving publicity to the amenities and advantages, other than commercial and industrial advantages, of the county, to enter into agreements with and make contributions towards any body or person approved by the M. of H., or itself to incur expense on advertising, other than in newspapers circulating exclusively or mainly within the county, and the provision of office accommodation for the dissemination of information relating to the council.

The section further provides that the council is not to be thereby authorised itself to advertise outside the United Kingdom or to establish an office outside the United Kingdom. [242]

(a) 29 Halsbury's Statutes 308.

(b) 29 Halsbury's Statutes 284.

PUERPERAL FEVER

See CLINICS; INFECTIOUS DISEASE; MATERNITY AND CHILD WELFARE.

PULMONARY TUBERCULOSIS

See TUBERCULOSIS.

PUMPS

See VILLAGE PUMPS.

PURCHASE, COMPULSORY

See COMPULSORY PURCHASE OF LAND.

PURIFICATION OF WATER

See WATER SUPPLY.

QUALIFICATIONS FOR MEMBERSHIP

See ALDERMAN; BOROUGH COUNCILLOR; COUNTY COUNCILLOR;
DISTRICT COUNCILLOR; PARISH COUNCILLOR.

QUARRIES

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See also titles :

EXPLOSIVES ;
HIGHWAY NUISANCES ;
MINES AND MINERALS ;

ROAD PROTECTION.
SUBSIDENCE.

Definition.—As defined by the Quarry (Fencing) Act, 1887, “the term ‘quarry’ includes every pit or opening made for the purpose of getting stone, slates, lime, chalk, clay, gravel or sand, but not any natural opening.” The Quarries Act, 1894, applies to “every place (not being a mine) in which persons work in getting slate, stone, coprolites or other minerals, *and any part of which is not more than twenty feet deep.*” The Factories Act, 1937 (Sched. IV.), has repealed the words in italics in the latter definition. DARLING, J., in considering the definition in the Act of 1894, expressed the view that “the widest meaning must be given to the phrase ‘other minerals,’ as used in the definition” (a). [243]

Acts of Parliament.—The statutes which deal with quarries are mainly the following : The Quarry (Fencing) Act, 1887 (*b*) ; the Quarries Act, 1894 (*c*) ; the Notice of Accidents Act, 1906 (*d*) ; the Factories Act, 1937 (s. 158) (*e*) ; and the provisions of various Mining Acts which have been applied to quarries, viz. : The Metalliferous Mines Regulation Acts, 1872 and 1875 (as specified in the Schedule to the Quarries Act, 1894 (*f*)) ; the Coal Mines Act, 1911 (ss. 92, 93 and 95) (*g*) ; the Mining Industry Act, 1920 (s. 19) (*h*). (For the Mines Acts, see title MINES AND MINERALS, Vol. IX., p. 201, where their effect is examined in detail.) [244]

Effect of the Factories Act, 1937.—Sect. 158 of the Factories Act, 1937, provides that :

“(1) The provisions of the Quarries Act, 1894, shall apply to all quarries of whatever depth, but for the purpose of that Act the expression quarry shall not include any place in which any manufacturing process, other than a process ancillary to the getting, dressing or preparation for sale of minerals is carried on.

“(2) The provisions of sect. 19 of the Mining Industry Act, 1920 (which empowers the Board of Trade to make general and special regulations with respect to metalliferous mines) shall apply to quarries as they apply to metalliferous mines, but with this modification, that for the reference in that section to the general rules contained in sect. 23 of the Metalliferous Mines Regulation Act, 1872, there shall be substituted a reference to all the provisions of that Act which apply to quarries.

“(3) Regulations made by the Board of Trade by virtue of the said sect. 19 with respect to quarries and metalliferous mines shall apply the provisions of sects. 92, 93 and 95 of the Coal Mines Act, 1911, so far as they relate to employment above ground, to women and young persons employed in connection with any quarry or metalliferous mine, in like manner as the provisions apply to the employment of such persons in connection with the mines mentioned in sect. 1 of that Act.

“(4) The Secretary of State may make arrangements with the Board of Trade with respect to any premises or place in or adjacent to a quarry or mine, for the exercise and performance by the Board of Trade of any of the powers and duties of the Secretary of State under this Act and for the exercise and performance by the Secretary of State of any of the powers and duties of the Board of Trade relating to quarries and mines, and it shall be lawful for the Board of Trade and their officers and the Secretary of State and his officers respectively to exercise and perform the said powers and duties in accordance with the arrangements.”

Sect. 151 (5) provides that “no premises in or adjacent to and belonging to a quarry or mine, being premises in which the only process carried on is a process ancillary to the getting, dressing or preparation for sale of minerals, shall be deemed to be a factory.” [245]

The effect of the above sections, taken in conjunction with the repeal of the Factory and Workshop Act, 1901, which (Sched. VI., Part II.) nominally included quarries among non-textile factories and workshops, and the repeal of sect. 3 of the Quarries Act, 1894, which made the Factory and Workshop Acts, 1878, to 1891 “and any future Act amending the same” applicable to quarries, together with the absence from the interpretation clause (sect. 151) of any definition of the expression “factory” which would seem capable of including a quarry,

(*b*) 12 Halsbury's Statutes 41.

(*d*) *Ibid.*, 73.

(*f*) 12 Halsbury's Statutes 19 *et seq.*

(*h*) *Ibid.*, 176.

(*c*) *Ibid.*, 69.

(*e*) 30 Halsbury's Statutes 302.

(*g*) *Ibid.*, 128, 129.

appears to be that the Factories Act, 1937, is not intended generally to apply to quarries in the same way as the legislation which it replaces, and that quarries, in matters which would have come under the old Acts, are to be dealt with in future on the same basis as mines and regulated and controlled under the various Mines Acts applicable thereto. [246]

Grant of Right to Work Quarries.—The special powers given to the Board of Trade and the Railway and Canal Commission by the Mines (Working Facilities and Support) Act, 1923 (*i*), apply to quarries; and in suitable cases applicants under the Act can obtain not only ancillary rights under sect. 3 necessary for the proper working of minerals in their ownership, but also the right, under sect. 1, of working minerals in land not belonging to them which are in danger of being left permanently unworked, if they can establish that the owners unreasonably refuse to allow the minerals to be worked, or demand terms which are unreasonable, and that the working of the minerals would be in the national interest (*k*). As regards what is necessary to constitute "national interest" within the meaning of the Act, MACKINNON, J., said in the case quoted: "It was stated somewhere in the evidence that this is the only industry in the neighbourhood and it employs a great number of men. In that sense, I think it is in the national interest that it should be worked," and the other members of the Railway and Canal Commission agreed with him.

It should be realised that the Act of 1923 only authorised the grant of the *right to work* minerals together, when necessary, with the ancillary right to occupy, let down and remove the surface, but does not authorise the "grant of the land," although as pointed out by MACKINNON, J. (*loc cit.*), "if you are granting a right to work minerals by means of quarrying, you are in effect doing the same thing as granting the fee simple of the land" (at p. 1610). Applications should therefore be for the right to work the minerals, with ancillary facilities, and not for an order granting and vesting in the applicants the land the subject of the application (*ibid.*). The fee remains in the owners.

But the right to let down the surface cannot be granted by the commission if the surface is a public roadway, for a roadway can only be stopped or diverted in accordance with the procedure laid down in sects. 84 and 85 of the Highway Act, 1835 (*l*) (see title MINES AND MINERALS, Vol. IX., p. 207), and there is no concurrent jurisdiction or alternative procedure under the Act of 1923. [247]

Safety Provisions.—The rules laid down for mines under the Metal-liferous Mines Regulation Acts, 1872 and 1875, apply to quarries (for details, see section on Safety Provisions, under the title MINES AND MINERALS, Vol. IX., p. 211). Sect. 3 of the Quarry (Fencing) Act, 1887 (*m*), provides that "where any quarry dangerous to the public is in open or unenclosed land within fifty yards of a highway or place of public resort dedicated to the public, and is not separated therefrom by a secure and sufficient fence, it shall be kept reasonably fenced for the prevention of accidents, and unless so kept shall be deemed to be a

(*i*) 12 Halsbury's Statutes 181.

(*k*) *Re West of England Road Metal Co., Ltd.*, [1936] 2 All E. R. 1607; Digest (Supp.).

(*l*) 9 Halsbury's Statutes 97, 99. *Hoddesdon U.D.C. v. Broxbourne Sand and Ballast Pits, Ltd.*, [1936] 2 K. B. 19; [1936] 1 All E. R. 798; Digest (Supp.).

(*m*) 12 Halsbury's Statutes 41.

nuisance liable to be dealt with summarily," *i.e.* in the manner of a "statutory nuisance" now coming under sect. 92 of the P.H.A., 1936 (*n*). Notice must be given to the owner or occupier under sect. 93 requiring abatement of the nuisance, and in case of non-compliance, complaint should be made to justices as provided for in sect. 94, and the local authorities may themselves abate the nuisance under sect. 95 (2) and recover their expenses under sect. 96. A mere licensee is not bound to fence (*o*). [248]

Explosives.—Negligent blasting near a highway is an offence indictable at common law (*p*). Quarry owners bringing explosives on their premises and exploding them there must keep all the results of the explosions on their own land (*q*). The Slate Mines (Gunpowder) Act, 1882 (*r*), enables the Board of Trade (to which the powers of the Secretary of State in relation to quarries were transferred by the Mining Industry Act, 1920) (*s*), in certain circumstances to exempt slate mines from the provisions of sect. 23 (2) of the Metalliferous Mines Regulation Act, 1872 (*t*), with respect to the use of gunpowder or other explosives. Otherwise, the provisions of the various Mines Acts applying to quarries, which regulate the use and storage of explosives in such mines, govern the position as regards explosives in quarries. [249]

Accidents.—The procedure in case of accidents in quarries is regulated by the Notice of Accidents Act, 1906 (*u*), which applies, with certain modifications the provisions in this matter of the Metalliferous Mines Act, 1872, and the Coal Mines Regulation Act, 1887. When a line or siding, not being part of a railway, is used in connection with a quarry, the line, for the purpose of procedure in case of accidents, shall be treated as if it were part of the quarry (sect. 3 of the Notice of Accidents Act, 1906). The Factories Act, 1937, repeals as regards quarries, sects. 4 and 5 of the Notice of Accidents Act, 1906, which were applicable thereto when the Factory and Workshop Acts were applicable to quarries (Sched. 4). [250]

Highway Authorities and Quarries.—Under the Highway Act, 1835, the highway authorities may take materials from waste lands or common ground for the purpose of road repairs (sect. 51) (*a*), and if such materials cannot be found in sufficient quantity on waste lands, they may, on the order of justices, enter private lands and obtain therefrom the stone and materials necessary, making such compensation for the materials and for the damage caused as shall be settled by the justices (sects. 53 and 54) (*b*). When the authorities open out a quarry for obtaining stone for highway repairs it is an offence for any person (except the owner of private grounds and persons authorised by him to get materials out of such quarry for private use and not for sale) to

(*n*) 29 Halsbury's Statutes 394.

(*o*) *Foster v. Newhaven Harbour Trustees* (1897), 61 J. P. 629; 34 Digest 750, 1233.

(*p*) *R. v. Mutters* (1864), L. & Ca. 491; 34 Digest 750, 1234.

(*q*) *Miles v. Forest Rock Granite Co., Ltd.* (1918), 34 T. L. R. 500; 34 Digest 750, 1235.

(*r*) 12 Halsbury's Statutes 40.

(*s*) S. 2 (1); *ibid.*, 173.

(*t*) *Ibid.*, 30.

(*u*) *Ibid.*, 73.

(*a*) 9 Halsbury's Statutes 72.

(*b*) *Ibid.*, 74.

remove materials therefrom without leave of the authority, unless the authority have discontinued working therein for the space of six weeks (sect. 47) (c). For the repair of bridges, as distinguished from highways, sect. 1 of the Bridges Act, 1803 (d), embodies the repealed Highways Act, 1773, sect. 27 of which enabled the authority to take refuse stone from quarries without licence from the owner; but digging out or extraction of stone from the quarry cannot take place without licence, and compensation must be paid for damage. Under sect. 1 of the Bridges Act, 1815 (e), the surveyor, bridgemaster and persons under contract for the rebuilding or repairing of a public bridge may, on the order of two justices, take stone in, from or out of any quarry or quarries whatsoever, except such as are situate in a garden, etc., without the licence or consent of the owner, provided that the quarry or quarries shall have been worked within the last three years preceding the time when the bridge shall be about to be rebuilt or repaired. Compensation for value of materials and damage to be paid as may be agreed or assessed.

Under sect. 118 (1) of the L.G.A., 1929 (f), the council of every county were bound to take over on April 1, 1930, if desired by the council of any urban district (not being one which has kept the functions of maintenance and repair of county roads within their district), any quarry belonging to the district council in their capacity as highway authority, together with any fixed plant therein, and the county council were also bound to take over from the same date if desired by the council of any rural district within the county any quarry, plant or materials belonging to the district council in their capacity as highway authority.

Under sect. 118 (2) where a district council relinquish or a county council determine the delegation of functions of maintenance, repair and improvement of a road the provisions of sub-sect. (1) are to apply as if the date on which the relinquishment or determination takes effect were the appointed day, and in the case of a rural district council as if the rural district council had on that date been a highway authority.

[251]

Checkweighing.—The provisions of the Checkweighing in Various Industries Act, 1919 (g), apply to the "getting of chalk or limestone from quarries" (sect. 1 (2)), and the workmen engaged in removing the top soil from chalk or limestone quarries preparatory to the getting of chalk or limestone are deemed to be workmen engaged in getting chalk or limestone (sect. 7 (2)). [252]

Ancient Monuments.—The Mines (Working Facilities and Support) Act, 1923 (h), enables local authorities to apply for proper protection from the effect of mining or quarrying operations for ancient monuments of which they have charge, and the Ancient Monuments Act, 1931 (i), enables the Commissioners of Works to prepare and confirm, in connection with any ancient monument, a "preservation scheme" defining a controlled area within which quarrying and excavations may be prohibited. [253]

Power to Open Quarries.—A lessee for a term of years cannot open

(c) 9 Halsbury's Statutes 70.

(e) *Ibid.*, 264.

(g) 12 Halsbury's Statutes 159.

(i) 24 Halsbury's Statutes 296.

(d) *Ibid.*, 255.

(f) 10 Halsbury's Statutes 959.

(h) *Ibid.*, 181.

quarries unless he has been granted a power to do so, but he may continue working those which were open when his term began (*k*). A tenant for life who may be impeached for waste is subject to the same rule. [254]

(*k*) *Elias v. Snowdon Slate Quarries Co.* (1879), 4 App. Cas. 454; 34 Digest 632, 291.

QUARTER SESSIONS

See APPEALS TO THE COURTS; RATING APPEALS.

QUARTER SESSIONS BOROUGHES

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CREATION	-	-	-	-	110	RELATIONS WITH COUNTIES - 111

See also title: RECORDER.

Definition.—Quarter sessions boroughs are boroughs having a separate court of quarter sessions (*a*). They may be county boroughs or non-county boroughs and they may be counties of a city or counties of a town. They are distinguishable from boroughs which only have a separate commission of the peace (*b*) and have no separate court of quarter sessions. The possession of a separate court of quarter sessions involves the appointment of a recorder (*c*) and the liability on the part of the borough to pay him a salary and to bear the other expenses of the sessions (*d*). These special expenses have led to a number of special provisions relating to the share of the financial burden which quarter sessions boroughs must contribute to the expenses of their respective counties, and these provisions form the principal differences between them and other boroughs. [255]

Creation.—Since the passing of the Municipal Corporations Act, 1882, quarter sessions boroughs have been created by the Crown (*e*). A borough council desiring to possess a separate court of quarter sessions petition the Crown in Council. The petition must state the grounds upon which it is made and the salary it is proposed to pay the recorder. The grant may be made upon such terms as seem fit to the Crown in Council and a sealed copy of the grant if made must be sent to the clerk of any county in which the borough is wholly or partly situate within ten days of the receipt by the borough council of the grant (*e*).

(*a*) L.G.A., 1888, s. 100; 10 Halsbury's Statutes 761.

(*b*) *Ibid.*, s. 36 (1); *ibid.*, 715.

(*c*) Municipal Corporations Act, 1882, s. 163; *ibid.*, 629.

(*d*) L.G.A., 1888, s. 37; *ibid.*, 716. For the jurisdiction of the sessions, see titles APPEALS TO THE COURTS and RATING APPEALS, and 8 Halsbury (2nd ed.), 1340-1346.

(*e*) Municipal Corporations Act, 1882, s. 162; 10 Halsbury's Statutes 629.

The council must also appoint a borough coroner (*f*). The Crown may revoke any grant of a separate court of quarter sessions (*g*). If the Crown subsequently grants any separate quarter sessions to a county such grant is not to affect the prior grant to a borough (*h*). [256]

Financial and Administrative Relations with Counties.—These matters are governed by the L.G.A., 1888, and the L.G.A., 1933. The L.G.A., 1888, in constituting certain boroughs (*i*) county boroughs and arranging for financial adjustments to take place between them and the counties in which they were situate provided that if such boroughs were not quarter sessions boroughs they should contribute their proper share of the expenses of quarter sessions and petty sessions and coroners, and that if such boroughs subsequently became quarter sessions boroughs, they must redeem their liability to contribute in a manner to be agreed or settled by arbitration (*k*). Apart from these provisions the powers, duties and financial liabilities of quarter sessions boroughs depend upon whether on the one hand they had at the census of 1881 a population of 10,000 or more, in which case these matters are governed by sect. 35 of the L.G.A., 1888, or on the other hand they had a population according to that census of under 10,000, in which case sects. 38 and 39 of that Act apply. [257]

(*f*) *Ibid.*, s. 171 ; *ibid.*, 632.

(*g*) L.G.A., 1888, s. 38 (7) ; *ibid.*, 717.

(*h*) Municipal Corporations Act, 1882, s. 187 ; *Ibid.*, 636.

(*i*) L.G.A., 1888, s. 31 ; 10 Halsbury's Statutes 708 ; see now L.G.A., 1933, Sched. I., Part II ; 26 Halsbury's Statutes 471.

(*k*) L.G.A., 1888, s. 32, and see L.G.A., 1933, s. 152 (2).

QUINQUENNIAL VALUATION

See VALUATION LIST.

QUO WARRANTO

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THE NATURE OF THE INFORMATION	112	TIME WITHIN WHICH APPLICATION HAD TO BE MADE - - -	113
CIRCUMSTANCES IN WHICH THE INFORMATION LAY - - -	112	PROCEDURE - - -	114

See also title : ACTIONS BY AND AGAINST LOCAL AUTHORITIES.

Introduction.—Informations in the nature of *quo warranto* were abolished by the Administration of Justice (Miscellaneous Provisions) Act, 1938, sect. 9. (*a*). The section provides that where, but for the abolition, an information would have lain, the court may grant an

(*a*) 31 Halsbury's Statutes.

injunction and, if necessary, make a declaration. An injunction may be granted only at the suit of a person who would before the commencement of the Act have been entitled to apply for an information. In view of the provisions of the section it becomes necessary to examine the nature of the information and to inquire into the circumstances in which it used to lie. [258]

The Nature of the Information.—An information in the nature of a *quo warranto* took the place of the old writ of *quo warranto* which lay against a person who usurped an office, franchise or liberty. The purpose of the writ was to call upon the usurper to show by what right he laid claim to the office in question (*b*). [259]

Circumstances in which the Information lay.—The information lay only in respect of an office which was substantive in character; in other words, it was necessary that the holder of the office should be independent and not merely a servant or deputy of another (*c*). The office had to be of a public nature (*d*); and had to be held under the Crown, or to have been created by the Crown either by charter or statute (*e*). In accordance with these rules *quo warranto* proceedings have been held to lie in respect of the following offices (*f*): a recorder of a borough (*g*); a freeman of a borough (*h*); an alderman (*i*); a town councillor (*j*); a clerk of the peace (*k*); a chief constable (*l*); a burgess (*m*). On the other hand, it was held that the information was not available in the case of a treasurer to a district council (*n*). [260]

The person against whom proceedings for the information were taken had to be in actual possession and user of the office in question. A mere claim to be admitted to the office is not enough. The question whether particular acts amounted to a sufficient possession and user was one of fact which was decided in accordance with the circumstances of the case (*o*).

Where by Act of Parliament a remedy by way of election petition was given, proceedings by way of an information were held to be impliedly excluded, at any rate in cases where the objection to the election was

(*b*) The information was originally a criminal proceeding which had for many centuries been used as a method of determining the civil rights with regard to the office. It was provided by the Supreme Court of Judicature (Consolidation) Act, 1925, s. 48; 13 Halsbury's Statutes 215, that the information should be deemed to be a civil proceeding for all purposes.

(*c*) *Darley v. R.* (1846), 12 Cl. & Fin. 520; 16 Digest 353, 1827; *R. v. Speyer*, *R. v. Cassel*, [1916] 1 K. B. 595; 16 Digest 361, 1926.

(*d*) Thus the information will lie against a privy councillor, *R. v. Speyer*, *R. v. Cassel* (*supra*); but not in respect of the office of master of a hospital and free school, *R. v. Mousley* (1846), 3 Q. B. 946; 16 Digest 355, 1862.

(*e*) *Darley v. R.*, *supra*.

(*f*) In some of these cases the question has been whether the writ of *quo warranto* lay, and not whether the information lay.

(*g*) *R. v. Colchester Corpn.* (1788), 2 Term Rep. 259; 16 Digest 300, 1132.

(*h*) *R. v. Pepper* (1838), 7 Ad. & El. 745; 16 Digest 358, 1891.

(*i*) *R. v. Bradley* (1861), 3 E. & E. 634; 16 Digest 370, 2046.

(*j*) *R. v. Ireland* (1868), L. R. 3 Q. B. 180; 33 Digest 9, 8.

(*k*) *R. v. Russell* (1869), 10 B. & S. 91; 33 Digest 378, 879.

(*l*) *R. v. Watkinson* (1839), 10 Ad. & El. 288.

(*m*) *R. v. Tate* (1803), 4 East, 337; 16 Digest 358, 1837.

(*n*) *R. v. Wells* (1895), 43 W. R. 576; 13 Digest 313, 461.

(*o*) See *R. v. Slatter* (1840), 11 Ad. & El. 505; 16 Digest 357, 1882, where the defendant had been elected a town councillor, but had not made the declaration required by the Municipal Corpn. Act, 1835, s. 50, and it was held that no user of the office had been shown sufficient to support an information. Cf. *R. v. Tate* (1803), 4 East, 337; 16 Digest 358, 1837.

disqualification in the candidate at the time of the election. It was, however, held that the remedy by *quo warranto* was not taken away where the objection was in respect of holding or exercising the office as opposed to mere election thereto (*p*). [261]

Who might apply for an Information.—An information calling upon a corporation or a body of persons acting as a corporation to show cause upon what authority they purported to act as such could be filed only by the Attorney-General.

In other cases application might be made by a private relator. It was necessary that the applicant should have some interest in the election which he sought to attack (*q*).

A relator was disqualified from making application if he had acquiesced in the election to which he was making objection (*r*), or if he stood in the same position as the defendant, so that he would have no title to his own office if his objection to the defendant's holding his office were valid (*s*), or if he were making an objection which might have been made against himself at a previous election (*t*). He was not, however, disqualified merely because he had attended meetings at which the defendant was present exercising the office which it was alleged he ought not to occupy (*u*). [262]

Time within which Application had to be made.—An application for an information against a person holding a corporate office had to be made within twelve months from the time of the election, or where disqualification arose after election, from the time of the disqualification (*a*). A similar rule applied in connection with the offices of chairman, member, committee man, or official of a county council (*b*).

Where the above statutory provisions did not apply the court used to exercise its discretion as to the time within which an application might be made. The usual limit was six years, but where election to the office was annual an application would not be entertained after the expiration of the year (*c*).

An election to a corporate office not attacked either by election petition or *quo warranto* proceedings within twelve months after the election was deemed to be good for all purposes (*d*). [263]

(*p*) *R. v. Beer*, [1903] 2 K. B. 693; 4 Digest 177, 1647, where the defendant was called upon to show by what authority he claimed to hold the office of councillor of a borough, the objection being that he was a bankrupt and so disqualified under the Bankruptcy Act, 1883, s. 32; 1 Halsbury's Statutes 581, from "being elected to or holding" the office.

(*q*) It was held that an information against a corporation official may be applied for at the relation of an inhabitant of the borough (*R. v. Hodge* (1819), 2 B. & Ald. 344, n; 16 Digest 363, 1952; *R. v. Parry* (1837), 6 Ad. & El. 810; 16 Digest 354, 1847).

(*r*) *R. v. Trevenen* (1819), 2 B. & Ald. 339; 16 Digest 364, 1960.

(*s*) *R. v. Cudlipp* (1796), 6 Term Rep. 503.

(*t*) *R. v. Lofthouse* (1866), 7 B. & S. 447; 16 Digest 364, 1966.

(*u*) *R. v. Bernay* (1831), 1 B. & Ad. 684; *R. v. Clarke* (1800), 1 East 38.

(*a*) Municipal Corpn. Act, 1882, s. 225; 10 Halsbury's Statutes 648. Time runs from the day following the election or disqualification. See *Ex parte Birkbeck* (1874), L. R. 9 Q. B. 256; 16 Digest 366, 1994.

(*b*) L.G.A., 1888, s. 75; 10 Halsbury's Statutes 746. It is thought that these time limits apply to the application for an injunction which has taken the place of an information.

(*c*) *R. v. Hodson* (1842), 4 Q. B. 648, n; 16 Digest 366, 1990.

(*d*) Municipal Corpn. Act, 1882, ss. 7, 73; 10 Halsbury's Statutes 577, 597. The object of these provisions is to deal with cases of derivative titles, see *R. v. Preece* (1843), 5 Q. B. 94; 16 Digest 366, 1937.

Procedure.—A power is given to make rules under the Supreme Court of Judicature (Consolidation) Act, 1925, sect. 99, prescribing the procedure to be followed in making application for the injunction which has taken the place of an information (e). [264]

(e) Administration of Justice (Miscellaneous Provisions) Act, 1938, s. 10.

QUORUM

See MEETINGS ; STANDING ORDERS.

RACECOURSES

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CONTROL OF DOG RACECOURSES	- 116		

See also titles :

BETTING ;
DERATING ;

| SAFETY PROVISION OF BUILDINGS AND
STANDS.

Licensing of Racecourses.—By the Racecourses Licensing Act, 1879, it was made unlawful for any horse-race to be held within a radius of ten miles from Charing Cross unless at a place for which a licence had been obtained (a). "Horse-race" is defined by sect. 1 of the Act as any race in which any horse, mare or gelding shall run or be made to run in competition with any other horse, mare or gelding or against time, for any prize of what nature or kind soever, or for any bet or wager made or to be made in respect of any such horse, mare or gelding, or the riders thereof, and at which more than twenty persons shall be present. Power was given in the Act to justices to grant the licence (b), but this passed to the county and county borough councils by the L.G.A., 1888 (c). Any person taking part in any horse-race on any open or enclosed land or place for which the necessary licence has not been obtained, may be fined upon summary conviction up to ten pounds or imprisoned for a period not exceeding two months (d), and the owner or lessee of the place may be fined not less than five or more than twenty-five pounds or imprisoned for not less than one or more than

a) Racecourses Licensing Act, 1879, s. 2 ; 8 Halsbury's Statutes 1168.

b) *Ibid.*, s. 3.

(c) S. 3 (v) ; 10 Halsbury's Statutes 689.

d) Racecourses Licensing Act, 1879, s. 5 ; 8 Halsbury's Statutes 1168.

three months (*e*). Unlicensed horse-races are deemed to be a nuisance, and any person injured or inconvenienced has the usual remedies against all persons taking part, and against owners, lessees and occupiers (*f*). The Racecourse Betting Act, 1928 (*g*), which set up the Racecourse Betting Control Board, did not affect the licensing of racecourses. By sect. 2 of the Street Betting Act, 1906 (*h*), it is provided that the Act does not apply to any ground used for the purpose of a racecourse for racing with horses or adjacent thereto on the days on which races take place. Where land in a field where athletic sports were being held was temporarily used for horse-racing, it was held that it was not within the section so as to exclude it from the Act (*i*). Racecourses are not agricultural land for derating; see title DERATING (*k*). [265]

All tracks where sporting events take place have now to be licensed under the Betting and Lotteries Act, 1934 (*l*). Counties and county borough councils are the licensing authorities, but any council may delegate the functions to a committee, or a joint committee of two or more councils, and a county council may also delegate the functions to the standing joint committee of quarter sessions and the county council, though in such a case the expenses must be borne by the county council (*m*). The licensing authority must fix the dates on which they will entertain applications for licences, and no application for a licence must be entertained unless, at least two months before, the applicant has given to the licensing authority and to the council of the county district or metropolitan borough, to the responsible authority for town planning in the area in which the track is situated, and the chief officer of police, notice of the intention to apply, and particulars of the situation of the track, the number and positions of the exits, and the number of spectators for whom accommodation is provided. These particulars must also be published in at least two newspapers circulating in the locality and must be kept at the office of the licensing authority for inspection by any member of the public free of charge. When the licensing authority considers the application, the following, in addition to the applicant, are entitled to be heard, namely, the chief officer of police, the town planning authority, the council of any county district or metropolitan borough in which the track is situated, the local authority of any district adjoining, any person owning or occupying premises in the neighbourhood of the track and the governing body of any school or institution in the neighbourhood. Every objector must give at least seven days' notice to the applicant and the licensing authority (*n*). The licensing authority may refuse to grant a licence only if they are satisfied that the existence or use of the track would injuriously affect the health or comfort of persons residing in the neighbourhood or be detrimental to the interests of persons receiving instruction, or residing, in any school or institute; would seriously impair the amenities of the neighbourhood; or would result in undue congestion of traffic, or seriously prejudice the preservation of law and order; or if the applicant has been convicted of any offence relating to

(*e*) Racecourses Licensing Act, 1879, s. 6; 8 Halsbury's Statutes 1169

(*f*) *Ibid.*, s. 7.

(*g*) 8 Halsbury's Statutes 1176.

(*h*) *Ibid.*, 1171.

(*i*) *Stead v. Ackroyd*, [1911] 1 K. B. 57; 25 Digest 433, 316.

(*k*) Vol. IV., p. 345.

(*l*) 27 Halsbury's Statutes 273. See title BETTING, Vol. II., p. 53.

(*m*) Betting and Lotteries Act, 1934, s. 5; 27 Halsbury's Statutes 275.

(*n*) *Ibid.*, s. 6.

betting, or the operation of the totalisator under the Act, or involving fraud or dishonesty (*o*). Where a planning scheme is in force or a resolution to prepare one has been passed, under which the consent of the authority is necessary to the establishment or continuance of a track, the licensing authority may refuse to grant a licence, or suspend its operation till the consent of the town planning authority has been obtained. A written statement of the grounds for refusal must be sent to the applicant (*o*). A licence normally lasts seven years, but it may be transferred or cancelled on request (*p*) or revoked if the track is conducted in a disorderly manner or so as to cause a nuisance, or the accommodation is increased or exits altered without their approval (*q*). The annual fee for a licence, which may not exceed fifty pounds, is fixed by the licensing authority (*r*). No *pari mutuel* or pool betting business may be carried on except on certain tracks (*s*), nor betting by any form of bookmaking or a totalisator on dog racecourses in connection with more than eight dog races, or during a continuous period of more than four hours (*t*), except for sixteen races and eight hours on four special days appointed by the licensing authority (*u*). Any person authorised in writing by the licensing authority, on producing his authority, and any constable, may at all reasonable times enter any track to ascertain whether the provisions of the Act are being complied with, and any person who obstructs is guilty of an offence (*a*). [266]

Control of Dog Racecourses.—The provisions of the Betting and Lotteries Act, 1934, in regard to licensing refer also to dog racecourses, and in the same Act restrictions are set out as to betting on such racecourses, as mentioned above (*b*). Sect. 11 of the Act (*c*) legalises the setting up of totalisators on dog racecourses, the establishment and operation of which must be regulated by the provision of the First Schedule (*c*). [267]

London.—Licences are issued by the L.C.C. as regards the County of London and in other places within the ten mile radius by the county council of the district in which the place for which a licence is desired is situated (*d*).

The L.C.C. has delegated its functions under the Betting and Lotteries Act, 1934, to the Standing Joint Committee of quarter sessions and of the Council. [268]

(*o*) Betting and Lotteries Act, 1934, s. 7, Sched. 1; 27 Halsbury's Statutes 278, 296.

(*p*) *Ibid.*, s. 9; *ibid.*, 280.

(*r*) *Ibid.*, s. 9 (6), *ibid.*, 281.

(*t*) *Ibid.*, s. 4, *ibid.*, 274.

(*a*) *Ibid.*, s. 19, *ibid.*, 287.

(*b*) *Ibid.*, s. 4, *ibid.*, 274. See title BETTING.

(*d*) L.G.A., 1888, s. 3 (*v*); 10 Halsbury's Statutes 689.

(*q*) *Ibid.*, s. 16, *ibid.*, 285.

(*s*) *Ibid.*, s. 3, *ibid.*, 274.

(*u*) *Ibid.*, s. 10, *ibid.*, 281.

(*c*) *Ibid.*, 282, 296.

RADIO

See WIRELESS.

RAG AND BONE DEALER

See also titles : OFFENSIVE TRADES ;
RAG FLOCK.

No person who collects or deals in rags, old clothes or similar articles, and no person who assists or acts on his behalf, may sell or deliver, gratuitously or not, any article of food or drink to any person in or from any shop or premises used for or in connection with the business of a dealer in these articles, or while engaged in collecting the articles. Neither may they sell any article at all to a person under the age of fourteen years. The penalty is a fine not exceeding five pounds (*a*). The same penalty is incurred by anybody who puts rags in a dustbin or ashpit when they have been exposed to infection from a notifiable disease and have not been disinfected (*b*). [269]

The trade of rag and bone dealer is an offensive trade under the P.H.A., 1936 (*c*), and is therefore governed by the regulations as to such trades (*d*). By sect. 108 (2) bye-laws may be made for the regulation of any such trade and model bye-laws (*e*) have been issued by the Minister of Health on the subject.

The premises of a rag and bone dealer may also be dealt with as a statutory nuisance (*f*) if they are "premises in such a state as to be prejudicial to health or a nuisance" (*g*). [270]

London.—The L.C.C. (General Powers) Act, 1908, s. 9 (*h*), empowers the City corporation as regards the City and the L.C.C. as regards the rest of the County of London, excepting the Port of London, to make bye-laws regulating the business of a rag and bone dealer. The bye-laws made by the L.C.C. are enforced by the metropolitan borough councils. [270A]

(*a*) P.H.A., 1936, s. 154 ; 29 Halsbury's Statutes 434.

(*b*) *Ibid.*, s. 156 ; *ibid.*, 435.

(*c*) *Ibid.*, s. 107 (1) (*i*) ; 29 Halsbury's Statutes, 403.

(*d*) See title OFFENSIVE TRADES, Vol. IX., p. 434.

(*e*) See title MODEL BYE-LAWS, Vol. IX., p. 240.

(*f*) P.H.A., 1936, ss. 91—100 ; 29 Halsbury's Statutes 394—400. See title NUISANCES, Vol. IX., p. 388.

(*g*) *Ibid.*, s. 92 (1) (*a*).

(*h*) 11 Halsbury's Statutes 1292.

RAG FLOCK

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See also titles : DISINFECTION ;
RAG AND BONE DEALER.

Meaning of Rag Flock.—Provisions in regard to rag flock are contained in the Rag Flock Act, 1911 (*a*), as amended by that of 1928 (*b*), the Acts being “to prohibit the sale and use for the purpose of the manufacture of certain articles of unclean flock manufactured from rags.” Sect. 1 of the earlier Act provides that no person may sell, or have in his possession for sale, flock manufactured from rags, or use, for the purpose of making any article of upholstery, cushions or bedding, flock manufactured from rags, or have in his possession flock intended to be used for any such purpose, unless it conforms to a standard of cleanliness prescribed by regulations made by the Local Government Board. The phrase “flock manufactured from rags” is defined by the amending Act of 1928 (*b*) as flock which has been produced wholly or partly by tearing up woven or knitted or felted materials, old or new, but does not include flock obtained wholly in the processes of the scouring and finishing of newly woven or newly knitted or newly felted fabrics.

Several cases have been decided on other words in the Act. “Making any article of bedding” was held not to include the process of taking flock out of the covering of a mattress and refilling the covering with the same and no other flock (*c*), but it was held to include taking old material not up to standard from two old mattresses and intending to put it in new covers (*d*); the word “rags” was held not to be limited to rags which had become polluted through having been used in association with human or animal life, but to include cuttings from woven jute fabric cut away as waste in the process of manufacture (*e*) or flock made from new and uncontaminated material (*f*). (The last case led to the enactment of the definition in the Act of 1928.) The word “sell” was held not to apply to the mere sale of second-hand articles of furniture which contain rag flock (*g*). [271]

Standard of Cleanliness.—The regulations were made by the Local Government Board in 1912 (*h*) and have not been altered since. They

(*a*) 13 Halsbury's Statutes 949.

(*b*) *Ibid.*, 1193.

(*c*) *Gamble v. Jordan*, [1913] 3 K. B. 149; 38 Digest 221, 539.

(*d*) *Guildford Corpn. v. Brown*, [1915] 1 K. B. 256; 38 Digest 222, 540.

(*e*) *Cooper v. Swift*, [1914] 1 K. B. 253; 38 Digest 222, 541.

(*f*) *Balmforth v. Chadburn*, [1927] 1 K. B. 663; 38 Digest 222, 543.

(*g*) *Cooper v. Evan Cook's Depositories*, [1915] 1 K. B. 344; 38 Digest 222, 542.

(*h*) S.R. & O., 1912, No. 578.

provide that flock shall be deemed to conform to the required standard of cleanliness when the amount of soluble chlorine, in the form of chlorides, removed by thorough washing with distilled water at a temperature not exceeding 25 degrees centigrade from not less than 40 grammes of a well-mixed sample of flock, does not exceed 30 parts of chlorine in 100,000 parts of the flock. [272]

Enforcement of Provisions.—It is the duty of sanitary authorities to enforce the provisions of the Act in their district, and for that purpose the M.O.H., sanitary inspector or any other officer whom the sanitary authority may appoint has power, if so authorised by the sanitary authority, to institute proceedings, to enter at all reasonable times any premises in which he has reasonable cause to believe that an offence under the Act is being committed, and to examine and take samples for the purpose of analysis of the flock (*i*). Where a sample is taken in this way, the occupier of the premises may require the officer taking the sample to divide it into two parts and to mark, seal and deliver to him one part (*k*). [273]

Where it is proved that an offence under the Act has been committed, but that the person charged has purchased the flock from a person resident in the United Kingdom who sold it under a warranty that it complied with the prescribed standard of cleanliness, and that he took reasonable steps to ascertain and did in fact believe in the accuracy of the warranty, he may have the person who gave the warranty brought before the court. That person may then be summarily convicted of the offence and may be liable to pay the costs of the proceedings in the discretion of the Court, while the person originally charged is then to be exempt from any fine (*l*). Flock found in the proceedings to have been in the possession of the person charged is deemed to be intended for sale or the manufacture of articles, unless the contrary is proved (*m*).

The fine may be up to ten pounds for a first offence and fifty pounds for a second or subsequent offence, and any person obstructing the officer may be liable to a fine up to five pounds (*n*). Expenses of administration are to be paid as other expenses of local authorities, and the fines are to be paid to them (*o*). [274]

London.—Similar provisions for the County of London are contained in the P.H. (London) Act, 1936, sects. 136, 275, 281, 287 and 288. [275]

(*i*) Rag Flock Act, 1911, s. 1 (5); 13 Halsbury's Statutes 950.

(*k*) *Ibid.*

(*l*) *Ibid.*, s. 1 (3); *ibid.*, 949.

(*m*) *Ibid.*, s. 1 (4).

(*n*) *Ibid.*, s. 1 (1), (5).

(*o*) L.G.A., 1933, ss. 185, 188, 190; 26 Halsbury's Statutes 407, 408, 409; Rag Flock Act, 1911, s. 1 (7).

RAGS, INFECTED

See DISINFECTION.

RAILWAYS, RATING OF

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See also titles :

ASSESSMENT FOR RATES ;
RATES AND RATING ;

RATING OF SPECIAL PROPERTIES ;
VALUATIONS FOR RATING.

Extent of Application of Statute.—The valuation for rating of practically all the railways in England and Wales is governed by the Railways (Valuation for Rating) Act, 1930 (a) (hereinafter called "the Act of 1930"). During the period April, 1931, to April, 1936, the Act of 1930 applied not only to the four amalgamated railway companies (viz. : the L.M.S., the L.N.E., the G.W. and the Southern), but also to the old Metropolitan Railway (now merged into the undertaking of the London Passenger Transport Board). As from April, 1936, the Act of 1930, as such, ceased to apply to the Metropolitan, but, in a modified version (hereinafter called "the Adapted Act" (b)), now applies, *inter alia*, to all the railways of that Board (including the old Metropolitan) (c). [276]

The Act of 1930 deals with the ascertainment of the *values*, for rating, of the property concerned ; it does not deal with liability to rates or with the levying or collection of rates. Its main purpose is to provide, by means of central machinery in place of local machinery, the appropriate net annual and rateable values which are to be inserted in the local valuation lists and on the basis of which rates are to be levied by the local rating authorities in respect of the property in question :

(a) 23 Halsbury's Statutes 455.

(b) See London Passenger Transport (Valuation for Rating) Scheme and Order, 1935 (June 5). Copies obtainable from the R.A.A. Office, 32, Queen Anne's Gate, London, S.W.1.

(c) Except where otherwise expressly stated in this title, it may be assumed that the provisions in the Adapted Act are, *mutatis mutandis*, similar to the corresponding provisions in the Act of 1930.

once those values have been settled, for the time being, by the procedure prescribed by the Act, the normal processes and implications of the general rating system operate, unimpaired, with reference to those values. Thus, the Act of 1930 repeals, as regards the hereditaments to which it applies, those provisions only of the R. & V.As. which relate to the ascertainment of the values of hereditaments (*d*) and is otherwise to be construed as one with those Acts (*e*). [277]

While, as already stated, the Act of 1930 (with the Adapted Act) covers practically all the railways in England and Wales, there are a few railways (not owned or operated by one or more of the four amalgamated companies, or by the London Passenger Transport Board)—*e.g.* the Mersey Railway, the Liverpool Overhead Electric Railway and certain light railways—to which it does not, at present, apply and which still fall to be valued for rating under the general law and the so-called “parochial principle” which, as the result of decided cases, had, before the Act of 1930, become part of that law. This system of valuation is a particular species of the genus “profits basis” or “accountancy method” of valuation for rating and is still applicable, in a less elaborate form, to the valuation of canals (*f*) other than the canals to which the Act of 1930 applies. As the railways to which the Act of 1930 does not apply are unimportant and as they may be brought within the Act of 1930 by a scheme approved by the Minister of Health (*g*), the system is not explained. [278]

The Act of 1930 applies not only to railways but also, with certain exceptions which will be noticed below, to almost all property occupied by railway companies: for example, in addition to the railways, comprising some 15,000 route miles and 7,000 stations, with their ancillary premises (*e.g.* depots, warehouses, power-houses, repair and manufacturing works), there are some sixty dock and harbour undertakings and some thirty canals to which the Act applies, and the Adapted Act, besides dealing with the railways of the London Passenger Transport Board, applies to all the tramway and trolley-bus systems of the Board. [279]

The Bodies Administering the Act.—Two authorities administer the Act of 1930 (*h*), namely, the Railway Assessment Authority (hereinafter called “the R.A.A.”) and the Anglo-Scottish Railways Assessment Authority (referred to in the Act as “the Joint Authority” and hereinafter called “the J.A.”) (*i*).

The R.A.A. consists of a chairman, who is an experienced lawyer appointed by the Lord Chancellor, and nine other members, three of whom are appointed by the Minister of Health at his discretion, and the remaining six members are appointed by the Minister on the recommendation of the following bodies (each body recommending one member): the L.C.C., the County Councils Association, the Association of Municipal Corporations, the Metropolitan Boroughs Standing Joint Committee, the Urban District Councils Association and the Rural District Councils Association (sect. 2 (2)). The R.A.A.

(*d*) S. 1 (1); 23 Halsbury's Statutes 455.

(*e*) S. 24 (1); *ibid.*, 478.

(*f*) See title RATING OF SPECIAL PROPERTIES. The valuation of railways, as it existed before the Act of 1930, derives originally from the valuation of canals.

(*g*) S. 1 (2) and the First Schedule.

(*h*) S. 2 and Part I. of Second Schedule. S. 2 of the Adapted Act makes the Railway Assessment Authority the administering body for that Act.

(*i*) S. 2 (1).

does not "represent" these bodies or their constituents, and although it has so far consisted entirely of members or officers (present or past) of local authorities, there is nothing to prevent the Minister from appointing, or the bodies from recommending, persons outside the sphere of local government. There is no specific provision for representation or appointment of persons connected with railway companies.

[280]

The J.A. consists of the chairman of the R.A.A. and two other members, one being the Assessor of Public Undertakings (Scotland) (*k*) and the other being appointed by the R.A.A. (*l*) (sect. 2 (3)). The chairman of the R.A.A. is to be paid by that body such remuneration as the Minister of Health may direct (sect. 2 (6)) : the other members of both authorities are unpaid but are entitled to be repaid any necessary travelling and other out-of-pocket expenses (sect. 2 (7)). The term of office of the chairman is five years, and that of any other member of the R.A.A. and of their representative on the J.A. is determined by the Minister of Health (sect. 2 (8), Sched. II., Part I, paras. 1, 9.).

Both authorities are required to make to the Minister (and, in the case of the J.A., also to the Secretary of State for Scotland) an annual report of their proceedings (including a summary of accounts) and the report has to be laid before each House of Parliament (sect. 2 (9)) (*m*). The accounts of the authorities are audited by such persons and in such manner as the Minister of Health may direct (Sched. II., Part II., 5) (*n*). [281]

The expenses of the R.A.A. are recoverable by precepts upon the council of every county and county borough (Sched. II., Part II., 2). The expenses are to be apportioned between those councils on the basis of the net annual values of the hereditaments concerned in the several areas (*o*). The expenses of the J.A. are apportioned between (i.) England and Wales and (ii.) Scotland in the proportion which the net receipts dealt with by the J.A. stand apportioned respectively to those countries, and the amount of the expenses apportioned to England and Wales is payable by the R.A.A. and forms part of their expenses for which they precept the aforesaid authorities (Sched. II., Part II., 2).

The R.A.A. and the J.A. may each appoint a clerk and appoint or employ valuers and other persons (Sched. II., Part I., 8) (*p*). [282]

(*k*) By the Assessor of Public Undertakings (Scotland) Act, 1934, "the Assessor of Railways and Canals for Scotland" referred to in s. 2 (3) of the Act of 1930 is now designated "the Assessor of Public Undertakings (Scotland)."

(*l*) Not necessarily (though, in fact, hitherto) from the members of the R.A.A.

(*m*) All the reports are obtainable from the Stationery Office (except the first report of the R.A.A.—covering the period August, 1930, to April, 1931—and except the first two reports of the J.A.—covering the period August, 1930, to April, 1931, and the period April, 1931, to April, 1932—which may be obtained from those bodies).

(*n*) Hitherto, the Minister has directed that the audit shall be carried out by the Chief Inspector of Audits of the M. of H.

(*o*) Para. 3 of Part II. of Sched. II. to the Act of 1930, and Part II. of the Railways (Valuation for Rating) Apportionment Scheme, 1931, as approved by the Minister of Health by Order dated April 20, 1932. Under the corresponding provision of the Adapted Act the expenses of the R.A.A. under that Act are to be recovered from the councils of the several counties and county boroughs within which the "transport undertaking" of the London Passenger Transport Board is carried on.

(*p*) The R.A.A. and the J.A. have hitherto appointed the same person to be the clerk of both authorities. They have not, so far, appointed whole-time officers for valuation and accountancy advice, but have for that purpose employed outside professional valuers and accountants.

Hereditaments to which the Act Applies.—The Act of 1930 applies to “railway hereditaments,” which are defined to be any hereditament occupied for the purposes of the “undertaking” of a railway company to which the Act for the time being applies. The “undertaking” is defined to include (i.) the principal undertaking (*g*), (ii.) any canal, dock or harbour undertaking of the company, (iii.) any subsidiary or ancillary undertaking carried on by the company, *other than a road-transport, sea-transport or air-transport undertaking*, and (iv.) the share of the company in any joint undertaking (other than as aforesaid) carried on by itself and any one or more of the other companies to which the Act applies (sect. 1 (3)). It would seem that the undertaking, as so defined, has, apart from the express exclusions, a very wide content (*r*).

The exclusion of “road-transport” does not operate to exclude “collection and delivery” services (*s*), and the exclusion of “sea-transport” does not operate to exclude, *e.g.*, the services of embarkation and disembarkation (*t*). It is to be noted that a company’s share of a joint undertaking carried on by itself and some other company outside the Act is not included in the “undertaking” (*u*).

A hereditament is a railway hereditament even if it is only partially occupied for the purposes of the “undertaking”. [283]

The following premises (*a*), even though they may be occupied for the purposes of the “undertaking,” are specifically deemed not to be, or form part of, a railway hereditament, viz.: (i.) dwelling-houses (*b*), (ii.) hotels, (iii.) places of public refreshment, (iv.) any premises so let out as to be capable of separate assessment (sect. 1 (3)). Premises let out by a railway company to third persons the access to which is uncontrolled by the company (in the sense, *e.g.*, that the premises are

(*g*) *I.e.* broadly speaking, the railway with its stations, depots, works and appurtenances.

(*r*) See *Cleethorpes U.D.C. v. L. and N.E. Rail. Co.*, [1936] 1 K. B. 264; Digest (Supp.) and *Newcastle-upon-Tyne and Another v. Railway Assessment Authority and L. and N.E. Rail. Co.*, [1937] A. C. 275; [1936] 3 All E. R. 616; Digest (Supp.). In the former it was held by the Railway and Canal Commission that a pier used primarily for recreation and certain pleasure gardens appurtenant, both occupied by the L.N.E. Rail. Co., but physically unconnected with their railway were properly treated as a railway hereditament: in the latter case it was held that the toll-road part of the L.N.E. High Level Bridge over the River Tyne—which part though physically connected with the railway part overhead was independent thereof and separate therefrom—was a railway hereditament.

(*s*) S. 23 (3) (i); 23 Halsbury’s Statutes 478. Thus, while a garage used by a railway company to house vehicles employed in conveying persons or goods by road in lieu of rail would not be a railway hereditament, if it housed vehicles employed to deliver or collect goods conveyed or to be conveyed by rail it would be such a hereditament.

(*t*) S. 23 (3) (ii.); *ibid.*, 478. Thus, while *e.g.* a marine store or yard for provisioning or repairing the company’s steamboats used in their shipping services would not be a railway hereditament, any premises (whether or not forming part of a dock or harbour of the company) occupied by the company in connection with the embarkation or disembarkation of goods or persons upon or from their steamboats would be such a hereditament.

(*u*) Now, by reason of s. 1 (2) of the Adapted Act, there is practically no joint railway which is not within either the Act of 1930 or the Adapted Act or both of them; see p. 124, *post*.

(*a*) Note that the exclusion here is not an exclusion from the “undertaking” as defined but of the particular premises concerned. Thus, though a hotel is excluded, premises occupied for the purpose of the general management of the hotel, refreshment room and restaurant car business of the company would be included.

(*b*) *E.g.* stationmasters’ houses, though physically forming part of station buildings, are excluded.

approached direct only from a public street or from an uncontrolled station forecourt) are capable of separate assessment and excluded from the railway hereditament with which they are physically connected; and as regards "let out" premises inside passenger stations (e.g. shops, stalls and kiosks), and goods yards (e.g. builders' merchants' and coal merchants' premises, warehouses, petrol depots and even manufactories), the House of Lords in *Westminster Corporation v. The Southern Rail. Co. and Others* (c) decided that these also are capable of separate assessment and should be so excluded. [284]

Hereditaments to which Adapted Act Applies.—The hereditaments to which the Adapted Act applies (called "transport hereditaments") are similarly defined (d), but, in addition, tramways (e) are included. By reason of the exclusion of "road-transport" imported from the Act of 1930, no part of the Board's road motor omnibus or coach services or the premises exclusively (f) occupied therefor are within the Adapted Act: such premises continue to be valued for rating purposes under the general law. Any railway carried on jointly by the Board and any one or more of the four amalgamated railway companies falls to be dealt with under both the Act of 1930 and the Adapted Act—the Board's share being part of their "transport undertaking" under the Adapted Act and the share of the amalgamated company being part of their "undertaking" under the Act of 1930 (g). [285]

Preparation of Railway Valuation Roll.—The R.A.A. prepares and publishes the "railway valuation roll" (hereinafter called "the roll"), which contains with respect to the railway hereditaments the various particulars as to values and descriptions which require to be entered subsequently in the local valuation lists. The roll is to be prepared in parts, and the particulars relating to each railway company are to be entered in a separate part (h). The first roll came into force on the "appointed day" (i), and subsequent rolls are to be prepared at quinquennial intervals after the appointed day (k). The particulars to be entered in the roll are prescribed partly by the Act of 1930 itself (l) and partly by the Rating and Valuation Acts (Railway Valuation Roll) Rules, 1933 (m), and its form is set out in those rules. [286]

(c) [1936] A. C. 511; [1936] 2 All E. R. 322; Digest (Supp.).

(d) S. 1 (3) of Adapted Act.

(e) "Tramway" includes any trolley-bus system—see definition in s. 107 (1) of the London Passenger Transport Act, 1933; 26 Halsbury's Statutes 846, as imported by s. 1 (3) of Adapted Act.

(f) If a hereditament is occupied partly for included purposes and partly also for excluded purposes, it will be a "transport hereditament" to which the Adapted Act applies.

(g) See, in particular, s. 1 (2) of Adapted Act.

(h) S. 3 (1) of Act of 1930; 23 Halsbury's Statutes 457. Each part of the roll is, in practice, a separate document and is hereafter in this title referred to as the roll of the company concerned. There is a separate roll for the London Passenger Transport Board (called "the London Passenger Transport Valuation Roll"); s. 3 (1) of Adapted Act.

(i) In relation to places outside London, the 1st, and, in relation to London, the 6th, of April, 1931 (s. 23 (1)). The appointed days under the Adapted Act are the same days in 1936.

(k) S. 3 (2).

(l) S. 8 (2); 23 Halsbury's Statutes 464, viz.: (i.) the appropriate average net receipts, (ii.) the net annual value of each undertaking as a whole, and (iii.) the net annual value and the rateable value of each railway hereditament.

(m) S.R. & O., 1933, No. 451. The roll is divided into three "Divisions," corresponding with the three parts of a valuation list, viz.: (i.) hereditaments other than "industrial" or "freight-transport," (ii.) industrial hereditaments, and (iii.)

Ascertainment of the Average Net Receipts.—In arriving at the net annual values of the railway hereditaments the R.A.A. have first to ascertain the average net receipts of each company from its undertaking (*n*) for certain specified years, and then, by reference to those net receipts, to estimate the net annual value of the undertaking (*n*) as a whole and finally to apportion, in accordance with the principles laid down in the apportionment scheme (*o*), a part of that total net annual value to each hereditament, which part is then deemed to be the net annual value of that hereditament. [287]

For the purposes of the first roll the average net receipts for the railway accounting years 1928 and 1929 were to be taken, and, for subsequent rolls, the average net receipts for the first five of the six accounting years next preceding the year in which the roll is to come into force (*p*).

The net receipts of any year are found by ascertaining (*q*) the gross receipts of the company from its "undertaking" (as defined) in that year and then deducting therefrom: (1) non-rateable receipts (*e.g.* (i.) receipts, rents, etc., from those parts of the whole undertaking which are excluded from the "undertaking" as defined, (ii.) receipts, rents, etc., from the properties specifically excluded from the Act, and (iii.) tolls in gross); and (2) the working expenses (*i.e.* the amounts properly charged to revenue in respect of management, working, maintenance and renewals (*r*) (including renewals of plant and rolling stock) and in respect of rates). [288]

Function of the J.A. in Relation to Average Net Receipts.—Where a railway company's undertaking is carried on in England (*s*), but not in Scotland, the average net receipts for the appropriate years are ascertained by the R.A.A. in the manner already indicated. But, where it is carried on in England and in Scotland (*i.e.* in the case of the L.M.S. and L.N.E.), the average net receipts are ascertained partly by the R.A.A., and partly by the J.A. (*t*). The latter ascertains (on the same lines as laid down for the R.A.A. in relation to purely English undertakings) the average net receipts of the Anglo-Scottish Railway Companies, so far as they are attributable to "railway working"

freight-transport hereditaments. The rules also prescribe the extent to which particulars in the roll shall be sent to the railway companies and the various classes of local authorities (see s. 8 (4) of the Act). The corresponding rules under the Adapted Act are S.R. & O. 1938, No. 514.

(*n*) In the case of the L.M.S. and L.N.E. Companies, it must be understood that the "undertaking" here and elsewhere in this title is the undertaking in so far as it is carried on in England (which throughout the Act includes Wales).

(*o*) See *post*, pp. 127, 128.

(*p*) Under the Adapted Act the average net receipts for the purpose of the first roll operating from April, 1936, are those for the Board's two accounting years 1933-1934 and 1934-1935, and for subsequent rolls the average net receipts for the five accounting years preceding the date on which the roll is to come into force.

(*q*) S. 4 (3) of Act of 1930; 23 Halsbury's Statutes 460.

(*r*) Where there exist accumulations of money previously set aside out of revenue for purposes of renewal, interest on such accumulations is credited in reduction of the working expenses (s. 4 (3) (ii.) (d); 23 Halsbury's Statutes 461). It was held in *L.M.S. and L.N.E. Rail. Co. v. Anglo-Scottish Railways Assessment Authority* (1933), 150 L. T. 361; Digest (Supp.), that sums so accumulated out of the "Government Compensation" paid to the amalgamated companies under ss. 11, 12 of the Railways Act, 1921; 14 Halsbury's Statutes 324, 326, in settlement of their claims in respect of the period of possession by the Government were not "set aside out of revenue" and were not to be brought into this computation.

(*s*) See note (*n*), *supra*.

(*t*) S. 5; 23 Halsbury's Statutes 461.

(i.e. A./c. No. 10 of the Railway Accounts) or are otherwise not attributable solely to hereditaments in England or solely to hereditaments in Scotland (e.g. collection and delivery and restaurant car receipts). The average net receipts so ascertained by the J.A. are then to be apportioned between England and Scotland on the basis of a fair and just estimate (*u*) of the proportion in which those receipts accrue in England and in Scotland respectively. When this apportionment has been provisionally made, a notice is published by the J.A. stating the proposed amount of the average net receipts, and the proposed apportionment thereof between the two countries (*a*).

Representations may be made, within two months of the publication of the notice, against the proposals by (as regards England) the railway company, or by any county valuation committee or county borough council within which the undertaking is carried on (*b*). [289]

After the J.A. have considered any representations and made such alterations, if any, in their proposals as they think fit, they are to publish a certificate stating their final determinations (*c*). Within two months of the date of the certificate appeals against those final determinations may be made to the Railway and Canal Commissioners (*d*) (and thence, on points of law only, to the House of Lords (*e*)) by the same bodies as can make representations.

To the average net receipts of an Anglo-Scottish Rail. Co. apportioned to England as certified by the J.A. (or as settled on appeal) must be added by the R.A.A. the average net receipts of the company which are attributable solely to hereditaments in England (e.g. receipts from docks, harbours, wharves and canals) (*f*). The combined figure represents the average net receipts of the company for the purposes of the Act. [290]

Determination of the Net Annual Value of the Undertaking as a Whole.—Having ascertained the average net receipts of each company for the appropriate years in the manner described above, the R.A.A. are then to estimate, by reference to those net receipts, the net annual value of the company's undertaking as a whole (hereinafter called "the cumulo net annual value").

The cumulo net annual value is defined by sect. 4 (1) (*b*) (*g*) to be the rent (estimated by reference to the said average net receipts) at which the railway hereditaments occupied by the company might reasonably be expected to let as a whole from year to year, if the tenant undertook to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and other expenses (if any) necessary to maintain the hereditaments in a state to command that rent. In estimating this rent, the R.A.A., and any court on appeal, are not

(*u*) For the mode in which this apportionment was made for the purposes of the first roll, see the Annual Reports of the J.A. for the years ended March 31, 1932, and March 31, 1935, respectively.

(*a*) Sched. III., para. 1; 23 Halsbury's Statutes 481.

(*b*) Sched. III., para. 2; *ibid.* (The receipts with which the J.A. deal can be objected to by this separate procedure only: they cannot be objected to as part of the roll. Proviso to para. 7 of Sched. III.)

(*c*) Sched. III., para. 4; *ibid.*

(*d*) S. 9 (1); *ibid.*, 465. (The rules of the Commissioners governing the procedure in connection with these and other appeals under the Act are referred to *post*, at p. 131, note (*o*)).

(*e*) See *post*, p. 131, note (*q*).

(*f*) S. 5 (1) (ii); 23 Halsbury's Statutes 462.

(*g*) For Anglo-Scottish Companies, see s. 5 (1) (iii); *ibid.*, 462.

bound by any custom or practice affecting the valuation of railways which obtained prior to the passing of the Act of 1930 in regard to the deduction or allowance to be made in respect of the capital of a tenant, but shall have regard to all relevant circumstances and all material considerations, with a view to securing that such rent shall represent a fair and just division of the net receipts as between landlord and tenant (sect. 4 (2)). [291]

In *Railway Assessment Authority v. Southern Rail. Co. (h)* it was unanimously held by the House of Lords that sect. 4 (2) did not authorise a departure from the "profits basis" which was applicable to railway valuation before the Act of 1930. This method was to ascertain the amount that the tenant would require to induce him to take and operate the hereditaments by calculating the capital required by him for the working of the undertaking and allowing him a percentage thereon, and then deducting this from the total net receipts, the balance remaining out of those net receipts being the landlord's share or rent. In view of this decision it is difficult to see what, if anything, sect. 4 (2) has added to the law as it existed before the Act of 1930—unless, indeed, it virtually stereotyped for railway hereditaments that particular species of the genus "profits basis" (viz. the calculation of the tenant's share by means of a percentage on tenant's capital, as contrasted, for example, with a calculation based on a percentage of gross receipts as is adopted for water undertakings (i)) which, though, in fact, universally applied to railways before the War, cannot be said to have been rendered legally obligatory by previous decisions of the higher courts. It was held that the assessing tribunal under the Act of 1930 is free to disregard old customs and practices with regard to the deduction or allowance in respect of the capital of the tenant (e.g. the mode of estimating the tenant's capital) but, presumably, the tribunal would have been so free apart from sect. 4 (2). [292]

Apportionment of Cumulo Net Annual Value to Arrive at Net Annual Values of Hereditaments.—Having determined the cumulo net annual value of each undertaking, the R.A.A. must apportion it among all the railway hereditaments occupied by the company in accordance with an apportionment scheme made and confirmed under sect. 13, the net annual value so apportioned to each hereditament being deemed to be the net annual value of the hereditament (k).

The apportionment scheme provided as follows :

First, the undertaking as a whole is to be divided into its "constituent undertakings," viz. : (a) the principal undertaking (i.e. broadly, the railway proper) ; (b) each dock or harbour undertaking ; (c) each canal undertaking ; and (d) each subsidiary undertaking (if any). The cumulo net annual value is then to be allocated in blocks to each of these constituent undertakings in accordance with a fair

(h) [1936] A. C. 266 ; [1936] 1 All E. R. 26 ; Digest (Supp.).

(i) See title RATING OF SPECIAL PROPERTIES (*post*, p. 194).

(k) S. 6 (1) ; 23 Halsbury's Statutes 463. S. 13, *ibid.*, provides for the manner in which the scheme is to be made, published and confirmed. Such a scheme (entitled "the Railways (Valuation for Rating) Apportionment Scheme, 1931") was confirmed by the Minister of Health on April 20, 1932, and copies may be obtained from the R.A.A. : it may be revoked or varied by another scheme made and confirmed in like manner (s. 13 (5)). The Scheme also makes provision for the basis of the apportionment of the expenses of the R.A.A. among the councils of the counties and county boroughs (see *ante*, p. 122). An apportionment scheme under s. 13 of the Adapted Act was confirmed by the Minister on April 10, 1937.

and just estimate of the relative value of each such undertaking to the undertaking as a whole. The net annual value thus allocated to each constituent undertaking is in turn to be apportioned among the individual hereditaments occupied for the purposes of the constituent undertaking in accordance with a fair and just estimate of the relative value of each such hereditament to the constituent undertaking.

[293]

In the case, however, of the principal undertaking there are two further sub-divisions. First of all, the hereditaments occupied for the purposes of the principal undertaking are divided into Class A and Class B; Class A consisting of all those hereditaments which are "land used only as a railway made under the powers of any Act of Parliament for public conveyance" (see footnote (g), *post*, p. 129); and Class B consisting of all other hereditaments of the principal undertaking not being "land used only as a railway." The net annual value allocated to the principal undertaking is then divided between those two classes—again on a relative value basis. The net annual value allocated to Class A is further sub-divided between the so-called "traffic element" and the "non-traffic element" (l). The traffic element net annual value is then allocated among the hereditaments of Class A in accordance with a fair and just estimate of the gross receipts from traffic attributable to each hereditament; and the non-traffic net annual value is allocated among those hereditaments in accordance with the relative value (if any) of each of them to the principal undertaking otherwise than from the gross receipts from traffic. The net annual value allocated to Class B as a whole is divided among the hereditaments of Class B in accordance with the relative value of each of them to the principal undertaking. [294]

The scheme does not lay down more than the principles of apportionment: the actual practice is, of course, more complicated (m). Having, by the process laid down in the apportionment scheme, determined the net annual value of each hereditament, the R.A.A. are then to calculate therefrom the rateable value in accordance with the provisions of the general law relating to the ascertainment of rateable value from net annual value (n). Broadly, the only railway hereditaments whose rateable values are the same as their net annual values are those exceptional hereditaments which are not freight-transport hereditaments (o) within sect. 5 of the R. & V. (Apportion-

(l) The reason for this further sub-division is, roughly, that (as explained in note (g) *post*, on p. 129) in hereditaments consisting of "land used only as a railway" there are parts (e.g. parts of platforms, loading ways and mounds over which no traffic is conveyed and as to which therefore volume or value of traffic affords no criterion of relative value.

(m) For accounts of the manner in which the scheme was carried out in the first valuation, see the Annual Reports of the R.A.A. for the years ended March 31, 1932 (pp. 5—10), and March 31, 1933 (pp. 6—8), Stationery Office, price 3d. each.

(n) S. 6 (2) 23 Halsbury's Statutes 463; see *Shoreditch Corp'n. v. R.A.A.* (1938), 28 R.A.A. 228.

(o) For example, hereditaments primarily occupied and used as offices for, or for purposes ancillary to, the general direction and management of a railway, canal or dock undertaking are expressly deemed not to be freight-transport hereditaments. It was decided by the Railway and Canal Commission in *Re. Southern Rail. Co.* (1935), 153 L. T. 105; Digest (Supp.): (a) that it was proper to segregate those parts of certain stations which are offices for general direction and management and treat them as separate hereditaments for this purpose, and (b) that "general direction and management" extended not only to the activities of such persons as the general manager, the secretary, the solicitor and the accountants, but also to certain of their subordinates (including, e.g. divisional traffic superintendents).

ment) Act, 1928 (p): the rateable value of railway hereditaments which are freight-transport hereditaments is different from their net annual value either because they are such hereditaments or because they are both such hereditaments and hereditaments consisting of "land used only as a railway made under the powers of any Act of Parliament for public conveyance or as a canal or towing path for a canal or land covered with water" (q). The net annual value of these last-mentioned hereditaments is in urban areas outside London reduced by a percentage (different in each rating area and corresponding to the partial relief from the old general district rate to which such hereditaments in that area were entitled before the consolidation of that rate into the general rate); and, if they are also freight-transport hereditaments (as they generally are), their net annual value, as so reduced, is still further reduced by 75 per cent. in order to arrive at their effective rateable value. The net annual value of freight-transport hereditaments which are not also "land used only as a railway, etc.," is reduced merely by the 75 per cent. to arrive at the effective rateable value. [295]

Stages in the Preparation of the Roll : Representations and Appeals.

—When the net annual value of each hereditament has been determined and the rateable value thereof calculated, the roll (r) can be prepared. There are three stages in its preparation, viz.: (i.) the settlement of a draft of the roll and the making to and consideration by the R.A.A. of "representations" (s), (ii.) the completion of the roll and the making to and determination by the courts of appeals (t), and (iii.) the revision (u) of the roll. [296]

(i.) *The Draft Roll and Representations.*—The draft roll contains the values and particulars which the R.A.A. propose to adopt, subject to the consideration of "representations."

A copy of the whole of the draft roll must be sent to the railway company; a copy of the part or parts containing the average net receipts, the cumulo net annual value and the values of the hereditaments in each county and county borough must be sent to each county valuation committee and each county borough council respectively, and a copy of the part containing the values of the hereditaments in each rating area must be sent to the rating authority (a). The

(p) 14 Halsbury's Statutes 719.

(q) Part II. of Sched. II. to R. & V.A., 1925 read with s. 22 (1) (b) thereof; 14 Halsbury's Statutes 647, 693. The phrase "land used only as a railway made under the powers of any Act of Parliament for public conveyance" has on several occasions (before the Act of 1930) received judicial interpretation, the last case before that Act being the *Lancs. and Yorks Rail. Co. v. Liverpool Corpn.*, [1915] A. C. 152; 38 Digest 489, 453. It was early established that the phrase covered more than the mere lines of railway but that, on the other hand, it did not cover station buildings. The extent, however, to which land not actually occupied by rails is to be treated as within the benefit of the partial relief is a matter of degree and has frequently given rise to difficulty. Under the Act of 1930 it was decided by the Railway and Canal Commission in *Re Southern Rail. Co.* (1935), 153 L. T. 105; Digest (Supp.), that the land used for high-tension electric cables conveying current to the sub-stations from which low-tension current is served to the "third-rail" and the sub-stations themselves were within the phrase in question. (There was no dispute that land occupied by the low-tension cables was within the partial exemption.)

(r) I.e. the part of the roll relating to each company.

(s) Sched. III., paras. 5 to 7; 23 Halsbury's Statutes 481, 482.

(t) Ss. 7 and 8 and Sched. III., para. 8; and s. 9; *ibid.*, 464, 465, 482.

(u) S. 10; *ibid.*, 468.

(a) Rule 10 of S.R. & O., 1933, No. 451; see also rule 9 of S.R. & O. 1938, No. 514.

information so circulated is to be accompanied by a notice (b) stating that the draft roll was settled on a specified date and is open to inspection, and every rating authority (including a county borough council) concerned is to deposit the information at their offices for twenty-one days and publish a suitable notice to that effect (c). [297]

Within such period, not being less than two months, as is specified in the notice with which the draft is circulated, representations may be made to the R.A.A. with respect to the proposed average net receipts (so far as they are to be ascertained by the R.A.A. (d)), or the proposed cumulo net annual value, by the railway company and any county valuation committee or county borough council concerned; and with respect to the proposed inclusion in, or exclusion from, the railway hereditament of any particular premises, or the proposed net annual value and rateable value of any railway hereditament, by any of the foregoing bodies, by any rating authority and by any person aggrieved (e). Every representation must state the grounds on which it is made and the alteration which it is thought should be made. [298]

The R.A.A. must consider every representation and invite the person making it and such other persons as they think fit to appear before them to be heard with respect to the representation (f). Upon hearing representations for or against inclusion, the R.A.A. are not to enter into any inquiry as to the correctness of the proposed cumulo (g). All representations having been considered, the R.A.A. are then to proceed with their final determination of the cumulo, its apportionment among the several railway hereditaments, and the calculation of the rateable value of each railway hereditament, giving effect to any representations which appear to them to be well founded (h). [299]

(ii.) *Completion of the Roll and Appeals.*—The R.A.A. give effect to their final determinations by completing the roll, and the circulation of the completed roll, together with a notice as to the date of completion, is made to all parties who received the draft roll (or extracts therefrom) with the addition of assessment committees (i). Appeals may be made to the Railway and Canal Commissioners against the decisions of the R.A.A., as embodied in the completed roll, on the same grounds and by the same persons as in the case of representations (k) (see *supra*). In the first instance, appeals are to be lodged with the Commissioners within two months of the date of completion of the roll, and copies of appeals must be served upon the R.A.A. who may appear as respondent thereto (l). The procedure to be adopted by the Commissioners in dealing with appeals is governed by the Railway and Canal Traffic Act, 1888 (m), with the modifications set out in sects.

(b) Sched. III., para. 5 (a); 23 Halsbury's Statutes 482.

(c) Rule 11 of S.R. & O., 1933, No. 451. A suitable form of notice has been prepared by the R.A.A. In order to save expense, rating authorities in counties have frequently combined for this purpose (see also r. 10 of S.R. & O. 1933, No. 514).

(d) As to representations against the average net receipts ascertained by the J.A., see footnote (b) *ante*, on p. 126.

(e) Sched. III., para. 6; 23 Halsbury's Statutes 482.

(f) *Ibid.*, para. 7; *ibid.* 482.

(g) *Ibid.*, para. 7, proviso; *ibid.*

(h) *Ibid.*, para. 8; *ibid.*

(i) S. 8 (4); *ibid.*, 465.

(k) S. 9 (2); *ibid.*

(l) S. 9 (3); *ibid.*, 466.

(m) 14 Halsbury's Statutes 220.

9 (4) (a) to 9 (4) (d) of the Act of 1930, one of which modifications (*n*), authorises the making of rules with respect to the procedure and practice in relation to these appeals. Rules entitled "The Railway and Canal Commission Rules, 1932" (*o*), have, in fact, been made under this section.

If the Commissioners are of the opinion that any appeal is well founded, they are to direct the R.A.A. to give effect to that opinion when "revising" the roll, or, if the roll has already been revised, they are to direct any necessary alterations to be made therein (*p*).

The decision of the Commissioners is subject to appeal direct to the House of Lords on points of law only (*q*).

County valuation committees and rating authorities may combine in the prosecution of or resistance to any representation or appeal, and enter into agreements for the sharing of expenses connected therewith (*r*).

[300]

(iii.) "*Revision of the Roll*."—The roll cannot be "revised" by the R.A.A. until after the expiration of six months from the date of the "completion" of the roll, and cannot even then be "revised" if there is still pending any appeal which may result in an alteration of the cumulo net annual value; and the roll, when revised, is to give effect to every decision upon appeal given up to the date of revision (*s*). After revision the roll must not be altered except to give effect to decisions on outstanding appeals or in accordance with the provisions of sect. 11 (*t*). [301]

Representations and Appeals under Sect. 11.—Changes of fact relating to hereditaments may necessitate during a quinquennial period alterations to the roll after it has been "revised" and, under sect. 11, representations may be made to the R.A.A. for such alterations to be made. The grounds for representations under this section are:

- (i.) a change in the occupation, or the character of the occupation, of a hereditament or part of a hereditament, necessitating the hereditament or the part being treated or ceasing to be treated as a railway hereditament or part of a railway hereditament;
- (ii.) a change in the value of a railway hereditament as a result of structural alterations, or total or partial destruction by fire or other physical cause;
- (iii.) an arithmetical or clerical error which has caused an incorrect value to be attributed in the roll to a railway hereditament.

Such representations may be made at any time during a quinquennium by a railway company or by the appropriate rating authority or county valuation committee or by any person aggrieved, and the R.A.A. must consider all representations received and give notice of their determinations to all parties concerned. If the person making the representation is dissatisfied with the R.A.A.'s determination, there is a right of appeal, within forty-two days of the determination, to the

(*n*) S. 9 (4) (c); 23 Halsbury's Statutes 467.

(*o*) S.R. & O., 1932, No. 502, L/12. See Railway Rating Law and Procedure (Konstam and Rowe), published by Butterworth & Co. and Shaw & Sons.

(*p*) S. 9 (5); 23 Halsbury's Statutes 467.

(*q*) S. 9 (4) (b); *ibid.*, 467.

(*r*) S. 15; *ibid.*, 475.

(*s*) S. 10 (1); *ibid.*, 468.

(*t*) S. 10 (2); *ibid.*

Railway and Canal Commissioners (*u*). Otherwise the provisions relating to appeals under sect. 11 are the same as those applying to appeals under sect. 9 (2) (*a*).

Alterations of the roll as a result of representations and appeals under sect. 11 will, of necessity, cause the cumulo net annual value of the undertaking to fluctuate, but, until the total of such alterations amounts to an increase, or reduction, as the case may be, of the original cumulo to the extent of £5,000 or 1 per cent. of the original cumulo, whichever is the greater, no re-apportionment of the original cumulo falls to be made (*b*). [302]

Alteration of Existing Valuation Lists.—As soon as an assessment committee have received a notice that a roll has been “completed,” and information as to the contents thereof, they are to make any necessary amendments in the local valuation lists (*c*), so as to make those lists conform to the roll. Railway hereditaments when entered in the valuation lists are to be distinguished by the letter “R” and by the number of the assessment in the roll (*d*). [303]

Miscellaneous Provisions.—Where an amendment made in any valuation list in pursuance of the provisions of the Act affects the amount of any rates paid, any overpayment is to be repaid or allowed to the ratepayer, and any underpayment may be recovered from the ratepayer as if it were arrears of the rates (*e*).

No appeal against a rate lies to quarter sessions in respect of any matter as to which relief might be obtained under the Act of 1930 by means of a representation to the R.A.A. or the J.A. or by an appeal to the Railway and Canal Commission (*f*).

No amendment is to be made in any valuation list in respect of a hereditament which appears in the railway valuation roll, except in pursuance of a notification to that effect made to the assessment committee by the R.A.A. under the provisions of the Act (*g*); and the provisions of the R. & V.As. with respect to objections and appeals against valuation lists are excluded from application to any such hereditament (*h*). [304]

Upon the requirement of a county valuation committee or a rating authority, the R.A.A. must state in writing whether any particular premises have, or have not, been treated as forming part of a railway hereditament, and any such statement is to be deemed to form part of the particulars in the roll and will, therefore, be liable to appeal (*i*). Any such requirement should specify clearly the particular premises in question.

Upon the request of a rating authority or assessment committee the R.A.A. must make, on behalf of the authority or committee, any

(*u*) S. 11 (3) (23 Halsbury's Statutes 469), read with rule 90 of S.R. & O., 1932, No. 502, L/12.

(*a*) See *ante*, p. 130.

(*b*) S. 11 (5); 23 Halsbury's Statutes 470.

(*c*) This provision does not apply in the case of the first roll, in relation to which no alterations are to be made in the valuation lists until the roll has been “revised” by the authority (para. 2 of Part II. of Sched. IV.).

(*d*) Rule 12 of S.R. & O., 1933, No. 451. As to “transport hereditaments,” see Rule 11 of S.R. & O., 1933, No. 514.

(*e*) S. 12 (6); 23 Halsbury's Statutes 472.

(*f*) S. 12 (9); *ibid.*, 473.

(*g*) S. 18 (1); *ibid.*, 476.

(*h*) S. 18 (3); *ibid.*

(*i*) S. 8 (3); *ibid.*, 464.

such apportionments of any value in the roll as may be required for the purposes of any enactment or scheme or order (*k*).

For the purpose of discharging their functions under the Act, the R.A.A. may request any reasonable assistance from rating authorities and assessment committees, and they may—as also may the J.A.—summon witnesses whom they may examine on oath (*l*).

The “draft” and “completed” rolls are to be on deposit and open to inspection at the offices of the R.A.A. for two months by all persons interested without payment of any fee. [305]

London.—The provisions of the Act apply generally to London without modification (*m*). Any reference to a county valuation committee is to be construed as including a reference to the L.C.C. (*n*). [306]

(*k*) S. 19 ; 23 Halsbury's Statutes 476.

(*l*) S. 14 (1), (2) ; *ibid.*, 474.

(*m*) But see s. 12 (8) and s. 18 (2) ; *ibid.*, 472, 476.

(*n*) S. 23 (2) ; *ibid.*, 473.

RAPES

See HUNDREDS.

RATE ACCOUNTS

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See also titles :

ACCOUNTS OF LOCAL AUTHORITIES ;
AUDIT ;
DISCOUNT FOR RATES ;
GENERAL RATE ;
BOROUGH ACCOUNTS ;
PENNY RATE ;

PRECEPTS ;
RATES AND RATING ;
RURAL DISTRICT COUNCIL ACCOUNTS ;
SPECIAL RATE ;
URBAN DISTRICT COUNCIL ACCOUNTS.

Description.—Rate accounts record the transactions of a rating authority (*a*) under the R. & V.A., 1925, in connection with the collection of general and special rates ; the costs, losses and allowances

(*a*) *I.e* the council of every borough and the council of every urban district and rural district (R. & V.A., 1925 s. 1 (1.) ; 14 Halsbury's Statutes 617).

of such collection; and the final distribution (*e.g.* in payment of precepts) of the net amount raised by rate. They do not contain records of the expenditure of rate moneys on services (*i.e.* the disbursements of the general rate fund). [807]

The Rate Accounts Orders.—The methods in which the accounts of rating authorities and their officers are to be kept and presented for audit are prescribed by the Rate Accounts (Borough and Urban District Councils) Order, 1926 (*b*), and the Rate Accounts (Rural District Councils) Order, 1926 (*c*), made by the M. of H. These orders came into operation on April 1, 1927, and apply (subject to any amendment or departure to which the M. of H. may from time to time assent) respectively to the authorities mentioned and their officers. Explanatory memoranda (*d*) by the M. of H. were issued with the orders, the principles of which are described below. [308]

Accounts of an Urban Rating Authority.—The chief accounts are on the one hand those which record in detail the transactions with individual ratepayers, and on the other hand the ledger accounts which record the final results of the year's rate collection and its disposal. The ledger accounts of the council to be kept by the chief financial officer include (1) personal accounts, with officers having cash transactions; with ratepayers, in respect of rates and costs; and with each precepting authority; (2) impersonal accounts, of valuation expenses, cost of rate collection, and rate income; and (3) final accounts, of rate income appropriation, and for each part of the area in which an amount is levied by means of an addition to the general rate of the area or to which income in aid of rate is credited. A continuous record must be kept of the ascertained products of the rates levied for each precepting authority, of each part of the area in which an additional item of rate is levied, and of each fund or revenue in respect of which the council are required to keep a separate account, showing the disposal thereof, and the surplus or deficiency to date in respect of each such levy.

The details of transactions with ratepayers may be entered, at the council's option, either in a rate book according to the form prescribed, containing full particulars of rates due and collected, allowances, arrears, etc., or in a rate charge book recording merely rates due from each ratepayer; in the latter case, the collection records are kept by the rate collector in a rate account book. Other necessary books and records are a summons list and costs account book, a rate arrears book, an account of rate receipt forms purchased and issued to collectors, and a rate produce book showing how the produce of a penny rate has been ascertained for the year. [309]

The order prescribes forms of ledger account, rate charge book, rate book, summons list and costs account, rate arrears book, rate account book, cash account, receipt book and statements to be attached to demands addressed to owners. Such forms may not be modified in any material respect without the express approval of the M. of H.; although such additions may be made to any form as may be useful in connection with the keeping or verification of the accounts.

Every rate collector must keep a rate account book if a rate charge

(b) S.R. & O., 1926, No. 1178.

(c) S.R. & O., 1926, No. 1123.

(d) Circular 734a, dated September 30, 1926, and Circular 734, dated September 27, 1926.

book is kept by the council, a cash account recording amounts collected, and a record of receipts issued ; and he must comply with the Accounts (Payment into Bank) Order, 1922 (*e*). He must bank all moneys received by him as directed by the council and in any case at least twice a week, and must submit his accounts for examination at least once a week.

Responsibility for the prompt and correct entry and balancing of the council's accounts, books and records, and for their presentation to council or committee for approval and submission for audit, rests on the chief financial officer, who is also charged with the duty of supervising and examining the accounts, books, and records required to be kept by other officers.

The order also contains directions as to the accountancy treatment of refunds of rates, and as to the duties of officers relating to the preparation of lists of items to be written off as irrecoverable and of returns as to new properties, changes of occupation, etc. [310]

Accounts of a Rural Rating Authority.—Accounts and records substantially the same as those described above are to be kept by the clerk or appropriate officer, subject to the following modifications. Special rates and special rate income must be distinguished from general rates (including additional items) and general rate income. A rate charge book must be kept, there being no option to keep a rate book ; consequently each rating officer must keep a rate account book. The rate charge book and officers' rate account books together constitute the rate book. Except for the omission of a form of rate book, the forms prescribed for rural district councils are identical with those prescribed for borough and urban district councils. Rating officers must bank all moneys received by them as directed by the council and in any case at least once a week, and must submit their accounts for examination at least once a month. [311]

Organisation.—The form of the records kept will to some extent be influenced by the type of organisation adopted for rate collection. In most urban rating areas collection is centralised in one office, and where this is so it is found more convenient to keep a rate book instead of a rate charge book. Where older methods are still employed, however, and collection officers are appointed to take charge of the collection in different districts of the rating area, the rate charge book and officers' rate account books will be found more suitable. The period of collection, *e.g.* yearly, half-yearly or quarterly, may also involve some modification of records. Where numbers of ratepayers make payment by instalments, regular or otherwise, it may be useful to keep a separate rate instalment book, from which transfers may be made to the rate book at the close of the rate period. Where mechanical methods are used, *e.g.* for the preparation of demand notes, the issue of receipts, and the entry of payments, it may be decided to substitute card or loose-leaf records for the rate book ; for this the M. of H.'s approval must be obtained.

As a matter of general office organisation, the detailed accounts with ratepayers are kept by the rate collection staff of the chief financial officer's department, while the ledger control accounts and final accounts are kept by the accountancy section of the department. [312]

Final Accounts.—The accounts showing the results of the year's

rate collection are generally published in the authority's abstract of accounts. They comprise as a rule (1) rate income account (in rural areas, general rate income and special rate income must be distinguished in separate accounts); (2) rate income appropriation account; and (3) balance sheet; frequently a ratepayers' account is also included, reflecting the personal side of the rate income account. The rate income account shows on the one hand the gross amount levied on ratepayers during the year, and on the other hand the loss on collection (refunds, allowances to owners, losses through voids, and other irrecoverable amounts) and the cost of collection (salaries, postages and office expenses, etc.); the balance, representing the net amount available for the purposes for which the rates were levied, is transferred to the rate income appropriation account. This account records the disposal of the net rate product; the amounts due under precept, having been duly ascertained (*f*), are charged to the account, any surplus or deficiency being carried forward to the next rate period. The balance represents the rate produce due to the council itself, and this may be dealt with in one of two ways. The account may be charged with the net amounts actually produced by the separate poundages of the rate levied for each fund or service, *e.g.* education, public assistance, etc., such amounts being credited to the corresponding service accounts in the general rate fund; or the total amount due to the council may be transferred in one sum to the general rate fund, from which transfers are made to meet the actual deficiencies in the several service accounts. The balance sheet shows *inter alia* the amount of recoverable arrears due from ratepayers and the amounts due to precepting authorities, etc. [313]

Audit.—Rate accounts are subject to district audit under the provisions of sect. 54 of the R. & V.A., 1925 (*g*), which also provides that for the purpose of calculating audit stamp duty (*h*) transfers from the rating account of a rating authority to accounts relating to its various services are to be treated as sums paid in pursuance of precepts. Borough councils not generally subject to district audit must keep their rate accounts apart from other accounts which are not subject to district audit, but this is not necessary in the case of other rating authorities. [314]

London.—Rate accounts of metropolitan borough councils must be kept in accordance with the London (Rate Collection) Accounts Order, 1901 (*i*). [315]

(*f*) See title PRECEPTS, Vol. X., p. 340.

(*g*) 14 Halsbury's Statutes 677.

(*h*) See title AUDIT, Vol. I., p. 503. Audit stamp duty payable after 1st September, 1938, in respect of accounts for any financial period ending after 31st March, 1937, is charged in accordance with the Audit Stamp Duty Order, 1938 (S.R. & O. 1938. No. 793). This order rescinds the Audit Stamp Duty (Local Authorities) Order, 1921 (S.R. & O. 1921, No. 1895), and prescribes a higher scale in lieu of that contained therein.

(*i*) S.R. & O., Rev. 1904, Vol. VIII, p. 88; amended by S.R. & O. 1912, No. 317.

RATE-AIDED PERSONS OF UNSOUND MIND

See PERSONS OF UNSOUND MIND.

RATE COLLECTION

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See also titles :

DIFFERENTIAL RATING ;
DISCOUNT FOR RATES ;
LONDON, RATING IN ;
PRECEPTS ;
RATING APPEALS ;

RATING AUTHORITIES ;
RATING OF OWNERS ;
RATING OF SPECIAL PROPERTIES ;
SPECIAL RATES.

GENERAL POWERS OF RECOVERY

Preliminary.—The first essential to the collection of rates from the persons liable is that the rate shall be made and published in accordance with the statutory provisions. The rate is made by a resolution of the rating authority, and is deemed to be made in respect of a period commencing immediately after the expiration of the previous rate and terminating on a date specified in the resolution (*a*). It is usual to make rates for periods of either a year or a half-year, and a resolution making the rate is inserted in the rate book so that the rates may comply with the requirement that it must show the purpose for which it is made. Notice of the rate when duly made must be published within seven days after the making thereof in one of the following prescribed ways (*b*) : (i.) by notice on church doors as prescribed by

(*a*) R. & V.A., 1925, ss. 4 (1), (2) ; 14 Halsbury's Statutes 623.

(*b*) *Ibid.*, s. 6 ; *ibid.*, 626.

the Parish Notices Act, 1837 (c), or (ii.) by notice in some public or conspicuous place in each parish, or (iii.) by newspaper advertisement. Different methods of publication may be used as respects different parts of the rating area. The liability of each ratepayer is recorded in the rate book or rate account book. The prescribed form of rate book is dealt with in the paragraph entitled rate books. Rates are due on demand and if payment is not made within seven days proceedings for recovery may be taken. These proceedings are outlined below. [316]

Demand.—The form of demand note is prescribed by the Rating and Valuation (Forms of Demand Note) Rules, 1930 (d), and all demands must be in the form prescribed or a form to similar effect. The forms must contain the following information (e) :

- (a) The situation of the hereditament in respect of which the demand note is issued, and such description thereof reasonably necessary for purposes of identification as may be prescribed ;
- (b) the rateable value, and, where it differs from the rateable value, the net annual value ;
- (c) the amount in the pound at which the rate is levied ;
- (d) the period in respect of which the rate is made ;
- (e) the amounts in the pound which are being levied for the purposes respectively of the rating authority and of each precepting authority ;
- (f) the amount in the pound, if any, which is being levied as an additional item to the general rate ;
- (g) the amounts in the pound which are being levied for such of the principal services administered by the rating authority and the precepting authorities as may be prescribed.

Four different forms of demand note are prescribed. Forms A., B., and C. for general rate in county boroughs, non-county boroughs or urban districts and rural districts respectively, and Form D. for special rate in rural districts. In preparing any demand note, there must be entered in the several columns particulars in accordance with the headings. The demand note may include demands for water rate, rent or charge, or other rate, rent or charge, or special rate, in one demand note. The demand note also must include information with regard to the place and mode of payment and information about discounts (if any) under sect. 8 of the R. & V.A., 1925. The prescribed form contains an instruction that "Cheques, Money Orders, and Postal Orders should be made payable to the Council and crossed. They should not be made payable to any individual officer." Every demand note must include a rate poundage statement in prescribed form, showing the equivalent in terms of a rate in the pound of the gross estimated expenditure less any income (including government grants) specifically applicable thereto in respect of : (i.) each service or group of services in respect of which a "separate fund account" is kept by the rating authority, (ii.) each of the services separately shown in a precept from any authority, (iii.) each of the services specified in the prescribed form which are not included in the above, if any expenditure is incurred thereon, and (iv.) the remaining services of the rating authority, specifying any individual items which the authority think fit.

(c) S. 2 ; 6 Halsbury's Statutes 122.

(d) 14 Halsbury's Statutes 853. See pp. 149 *et seq.*, *post*.

(e) R. & V.A., 1925, s. 7 ; 14 Halsbury's Statutes 626.

Where a government grant is payable to the rating authority or the county council in respect of any specific service, that service is to be indicated by an asterisk. The total amount of grant under the L.G.A., 1929, is to be shown separately in terms of rate in the pound. [317]

Service of Demand Note.—A demand note may be served in any of the following ways : (i.) by delivery to the person concerned ; (ii.) by leaving it at the last known place of abode of the person or in the case of a registered company, at its registered office ; or (iii.) by posting it to the usual or last known place of abode of the person, or registered office of the company ; or (iv.) by delivery to some person on the premises to which it relates or if there is no such person, by fixing it on some conspicuous part of the premises ; or (v.) where the rated hereditament is a place of business of the person rated (f), by delivery at, or posting to, such place of business. [318]

Any demand note or other notice required to be issued may be addressed by the description " occupier " or " owner " at the premises concerned, without further description if the names are not known (g). Where a demand note (or other notice) has to be sent to a public or local authority it will be deemed to be duly served if delivered or sent by post to the office of the authority addressed to the authority or their clerk. Where the demand is sent by the authority it is sufficiently authenticated if bearing the signature of the clerk or a duly authorised officer (h).

As already indicated, proper demand is essential to proceedings for recovery, and the exact sum legally due must be demanded (i), but demand for the full amount is sufficient to enable proceedings to be taken when the ratepayer has gone out of occupation and therefore the full amount of the demand is not due (k). A demand note may be served after the expiration of the rate period (l). [319]

Complaint and Summons.—When a rate has been duly demanded proceedings may be taken to enforce recovery. Under sect. 12 of the Poor Relief Act, 1814 (m), where any person fails or neglects to pay any sum due, power is given to the rating authority to distrain after seven days from demanding the rate. In practice a longer period is allowed to elapse after demand before proceedings for recovery are instituted.

The first proceeding is a complaint in the form prescribed (n) made to a justice by an officer duly authorised by a resolution of the rating authority (o) praying that the defaulter may be summoned to show cause why he has not paid, and refuses to pay, the rate. The justice has no option but must issue a summons in the form prescribed requiring him to appear before two or more justices on a day and time named. The summons may be served in the same manner as a demand note (see *supra*) except as respects the right to fix it in some conspicuous place on the premises. The summons includes

(f) R. & V. A., 1925, s. 59 (1) ; 14 Halsbury's Statutes 680.

(g) *Ibid.*, s. 59 (2) ; *ibid.*

(h) *Ibid.*, s. 59 (3) ; *ibid.*

(i) *Hurrell v. Wink* (1818), 8 Taunt. 369 ; 18 Digest 402, 1424.

(k) *Mansel v. Itchen Overseers*, [1906] 1 K. B. 221 ; 18 Digest 402, 1423.

(l) *Gill v. Mellor*, [1924] 1 K. B. 97 ; 38 Digest 625, 1454.

(m) 14 Halsbury's Statutes 496.

(n) Schedule to the Distress for Rates Act, 1849 ; 14 Halsbury's Statutes 515.

(o) L.G.A., 1933, s. 277 ; 26 Halsbury's Statutes 452.

the amount of the rate and costs incurred thereon. On payment of the full amount proceedings will be stayed.

A rating authority may take proceedings for the recovery of rates in respect of compounded property before the date fixed by which the rate must be paid to secure the allowance (*p*). [320]

Hearing.—At the hearing, the officer who has been duly authorised by the rating authority to institute the proceedings must produce the rate book and if the ratepayer objects, must be prepared to prove that all necessary formalities have been complied with, *e.g.* making and publication of the rate, demand, and non-payment within seven days (*q*).

The person summoned may bring forward objections to the validity of the rate in so far as the authority have acted in excess of their jurisdiction but not in so far as they have acted erroneously in the exercise of that jurisdiction. There can therefore be no objection on the grounds of the reasonableness of the assessment or any other matters which affect the valuation list. The correct procedure is in that case to proceed against the valuation list in the manner prescribed. Thus it has been held that the distress warrant can be withheld only on such grounds as that the persons summoned are not the persons liable or that the premises are not within the area of the rate or that the rate itself is invalidated, *e.g.* through lack of publication, unauthorised alteration of the books, or the absence of information of the purposes for which the rate was made. [321]

Distress Warrant.—When it has been duly proved, as set out above, that the rate has been properly made and demanded, and any objection has been overruled, the justices will issue a distress warrant, which may include a sum for costs and expenses (*s*). The justices have no power to withhold the issue of the warrant in respect of the rates on the grounds of poverty (*t*). The form is prescribed in the Schedule to the Distress for Rates Act, 1849, and is to be directed to the rating authority, a constable or other persons as the justices think fit. One warrant may be made out against any number of persons (*u*).

The warrant when issued authorises seizure of the goods and chattels of the ratepayer for the satisfaction of the demand for rates. If the rates and costs as ordered in the warrant remain unpaid after five days, the goods may be sold. The sale is usually by a licensed auctioneer. The goods cannot be impounded on the premises but must be removed for sale; the common practice of arranging for what is known as "walking possession" is not legal.

If no goods are found, the warrant will be returned marked "no effects." When the goods seized are insufficient (owing to an error in estimating their value) a second distraint may be levied (*a*). Only the goods of the person assessed may be taken under a distress warrant and they must be the absolute property of the ratepayer and only such goods as appear reasonably sufficient may be seized. The power of distraint includes beasts of the plough (*a*) and working tools of a shop (*b*).

(*p*) *Lowery v. Kingston-upon-Hull Corpn.*, [1930] 1 K. B. 368; Digest (Supp.).

(*q*) Poor Relief Act, 1814, s. 12; 14 Halsbury's Statutes 496.

(*s*) Distress for Rates Act, 1849, s. 1; 14 Halsbury's Statutes 512.

(*t*) *R. v. Handsley* (1881), 7 Q. B. D. 398; 18 Digest 406, 1457.

(*u*) Distress for Rates Act, 1849, s. 3; 14 Halsbury's Statutes 513.

(*a*) *Hutchins v. Chambers* (1758), 1 Burr. 579; 18 Digest 358, 956.

(*b*) *Edgcomb v. Sparks* (1680), 2 Show. 126; 18 Digest 397, 1380.

It has been pointed out that the distress includes costs; it is, however, doubtful whether, if the amount of rates only is accepted, costs can be recovered by distraint and therefore it is probably desirable not to accept a tender of the lesser amount. [322]

Appeal against Distress.—There is a right of appeal to quarter sessions where a person is aggrieved by distress for non-payment of rates (c). It appears, however, that the appeal is against the levy of the distress and cannot be made until the levy has actually been made (d). Grounds of objection to the rate itself cannot always be brought up in an appeal against the distress (e). An alternative is to bring an action of replevin to test the legality of the distress. The justices may, if they think fit, state a case for the opinion of the King's Bench Division before issuing a distress warrant (f). [323]

Commitment.—If a warrant is returned because no or only insufficient goods can be found, the rating authority may then apply to the justices for a warrant committing the defaulter to prison for a period not exceeding three months unless the amount is paid. The justices cannot issue a warrant unless they first issue a summons requiring the defaulter to appear before them, and they must inquire in his presence whether his default is due to his culpable neglect or wilful refusal and if they are satisfied that his failure to pay was not so due, they may not issue the warrant (g). If he fails to appear, the justices must issue a warrant of arrest to secure his attendance. On consideration of an application for a committal order, the justices may excuse payment of the rate (g). [324]

Miscellaneous Points as to Recovery.—There is no particular statutory limitation as to the time within which rates may be recovered. The rate need not have been demanded during the currency of the rate, although it is of course advisable so to demand it. Although demand is an essential preliminary to taking steps to secure distress, it is not essential for it to be made in order to ensure that the ratepayer is liable (h). When a mistaken demand has been made for less than the sum due and the sum demanded has been paid, proceedings may still be taken to recover the balance after service of an amended demand (i).

There is nothing to prevent the acceptance by a local authority of payments on account and powers of recovery will not be affected thereby. The justices have the right to decide whether they will allow payment on account offered in court to be accepted or whether they will issue a distress for the full amount (j). On the other hand, any payments must be treated as part of the whole and not as being in respect of specified services.

All proceedings should be taken by an officer authorised by the local authority to do so by its resolution (k), and such officer must take full charge although others may give evidence to prove the demand, etc. [325]

(c) Poor Relief Act, 1743, s. 7; 14 Halsbury's Statutes 488.

(d) *R. v. London J.J.*, [1899] 1 Q. B. 532; 18 Digest 422, 1602.

(e) *R. v. Kent J.J.*, *Ex parte Roots* (1867), 16 L. T. 672; 18 Digest 422, 1601.

(f) *R. v. Mayor of London* (1887), 52 J. P. 70; Digest Supp.

(g) Money Payments (Justices Procedure) Act, 1935, ss. 10, 11; 28 Halsbury's Statutes 130.

(h) *Gill v. Mellor*, [1924] 1 K. B. 97; 38 Digest 625, 1454.

(i) *R. v. Blenkinsop*, [1892] 1 Q. B. 43; 18 Digest 395, 1374.

(j) *R. v. Gillespie*, [1904] 1 K. B. 174; 18 Digest 405, 1453.

(k) *R. & V.A.*, 1925, s. 56; 14 Halsbury's Statutes 678.

SPECIAL POWERS OF RECOVERY IN CERTAIN CIRCUMSTANCES

In addition to the powers of recovery from the person primarily liable, rating authorities have certain other powers to recover from others. [326]

Recovery of Rates from Occupier where Owner Rated.—Where an owner fails to pay rates in respect of which he is liable or in respect of which he has compounded for payment (*l*) the occupier may (voluntarily) pay the amount due and deduct it from the rent which is due or accruing due; the receipt for the rate being a valid discharge of the rent to the extent of the amount paid (*m*).

Although the owner is personally liable, the goods and chattels of the occupier may be distrained on and sold for the rates unpaid by the owner in certain circumstances. The rates due must have been demanded from the occupier and have remained unpaid for fourteen days after demand, and the sum to be raised by the distress on the tenant's property must not exceed the amount of rent which the tenant owes to the owner. Where rates are paid by the occupier in such circumstances or are recovered by distraint of the occupier's property, the occupier has the right to recoup the amount together with costs by deduction from the rent due or accruing due (*n*). [327]

Recovery from Tenants and Lodgers.—In addition to the power to recover rates from occupiers in the manner outlined above, rating authorities have power to recover from tenants, lodgers and other persons paying rents to the person liable for the rates. The latter may be liable either as an owner or an occupier. The procedure is that a notice may be served, where rates are in arrear, on any person paying rent in respect of the hereditament rated, whether as an ordinary tenant or as a lodger, requiring that all future payments of rent (whether already accrued due or not) shall be made to the rating authority until the amount of rates due is paid. The notices operate to transfer to the rating authority the right to recover, receive, and give a receipt for such rent. The authority is therefore able to distrain for the rent, as such, and not as rates. The right of distress is, however, subject to the prior right to recovery of the rent which is vested in a superior landlord by virtue of a notice served under sect. 6 of the Law of Distress Amendment Act, 1908 (*o*). [328]

Insolvency. Bankruptcy.—When a ratepayer becomes bankrupt, the ordinary powers of recovery by distraint do not operate (*p*). The rate due should be proved in the ordinary way by an affidavit sent by post to the trustee in bankruptcy. All rates becoming due and payable within twelve months next before the date of the receiving order are preferential debts and will rank as such with all other preferential charges (*q*). All rates due before then and all costs must be proved in the ordinary way and will rank for dividend as ordinary debts. The question of whether a trustee is personally in beneficial occupation and therefore rateable is a matter of fact which must be decided

(*l*) See title RATING OF OWNERS.

(*m*) Poor Rate Assessment and Collection Act, 1869, s. 8; 14 Halsbury's Statutes 548.

(*n*) *Ibid.*, s. 12; *ibid.*, 549.

(*o*) R. & V.A., 1925, s. 15; 14 Halsbury's Statutes 639.

(*p*) Bankruptcy Act, 1914, s. 7; 1 Halsbury's Statutes 610.

(*q*) *Ibid.*, s. 33 (1) (a); *ibid.*, 638.

according to the circumstances. A trustee will not, however, be discharged from liability to pay rates in respect of his beneficial occupation of property burdened with onerous charges by the fact that he subsequently disclaims the property (*r*). [329]

Winding Up of Companies.—The position with regard to the recovery of rates from companies which go into liquidation is similar to that in respect of bankruptcy, *i.e.* rates becoming due and payable twelve months prior to the commencement of the winding up are preferential (*s*). The question of the liability of the liquidator is, as in the case of bankruptcy, one to be decided on the facts of each case. A similar position arises where a receiver is appointed for debenture holders. [330]

Death of a Ratepayer.—It appears probable that rates unpaid may be recovered from the executors or administrators of a deceased solvent ratepayer. The point has never actually been settled in court, but the possibility of an executor refusing to pay is very remote. Where a ratepayer dies insolvent there is the same priority as for ordinary bankruptcy, the rates being preferential for twelve months prior to death (*t*). [331]

Recovery when Appeal is Pending.—Where a ratepayer has made an objection to or proposal for the amendment of the valuation list in force, the authority may still recover the rate. The amount recoverable, pending an appeal to quarter sessions, is limited to the amount which would have been recoverable if the value had not been increased, unless the hereditament itself has been substantially altered since the value was previously determined (*u*). [332]

Payments by Instalments.—When a rate is made for a period greater than three months, the rating authority may, if they think fit, declare that the rate shall be payable by fixed instalments. These instalments are usually of equal amounts payable at regular intervals and only the amount of each instalment is payable when it falls due (*x*).

No occupier of any rateable hereditament which is let to him for a period of three months or less can be compelled to pay to the rating authority at any time or within any period of four weeks more than the rate due for one quarter (*a*). This includes an occupier on a tenancy from week to week determinable by one week's notice on either side (*b*). Where an occupier claims this right, distress warrants may be obtained on proof of oral demand for an instalment (*c*) provided the original rate was properly demanded. [333]

Crown Property.—Property in the occupation of the Crown, or occupied for the purpose of the public government of the country is not generally rateable. A voluntary contribution in lieu of rates is, however, paid by the Treasury in respect of all property maintained directly out of parliamentary moneys (except Royal Palaces) to the

(*r*) *Re Lister, Ex parte Bradford Overseers and Corpn.*, [1926] Ch. 149, C. A.; Digest (Supp.).

(*s*) Companies Act, 1929, s. 264 (1) (*a*); 2 Halsbury's Statutes 945.

(*t*) Bankruptcy Act, 1914, s. 33 (5); 1 Halsbury's Statutes 639.

(*u*) R. & V.A., 1925, s. 36; 14 Halsbury's Statutes 663.

(*x*) Poor Rate Assessment and Collection Act, 1869, s. 15; *ibid.*, 550.

(*a*) *Ibid.*, s. 2; *ibid.*, 546.

(*b*) *Hammond v. Farrow*, [1904] 2 K. B. 332; 38 Digest 514, 676.

(*c*) *Walton-on-the-Hill Overseers v. Jones*, [1893] 2 Q. B. 175; 18 Digest 402, 1422.

rating authority on the basis of a valuation by the Treasury Valuer which is the equivalent of rateable value. This latter value, and the payments, must be entered in the rate book. [334]

Land taken under Land Clauses Acts.—Where the Lands Clauses Consolidation Act, 1845, is incorporated in a local Act, and land is taken by railway or other companies for the purpose of public works, the promoters are liable to pay a contribution to the rating authority to make good the deficiency in the general rate resulting therefrom (*d*). In urban areas this is only one-half of the amount. The amount paid is to be taken into consideration in calculating the product of the rate and the assessment is to be entered in the rate book. The demand for payment should be made by letter. [335]

New Properties and Changes in Occupation.—The rate when duly made may be amended in respect of changes in occupation, omissions from the rate book and by reason of new properties coming into occupation, etc. (*e*), and any such amendment may apply also to the last preceding rate. The amount due is fixed by apportioning the rate on the basis of the number of days of occupation to the period of the rate. Where a new tenant comes into occupation, the rate is payable on the assumption that he will remain until the end of the period (*f*). When the rate is payable by instalments, the whole rate is to be apportioned (*g*). Amendments requiring an alteration of the valuation list by proposal under sect. 37 of the 1925 Act will have effect only from the beginning of the current rate or the date of the happening of the event giving rise to the alteration, whichever is the later. Where rates have been paid and the ratepayer leaves during the currency of the rate, the amount overpaid should be refunded either by the rating authority or by the new occupier (*h*). [336]

Excusal of Payment.—The rating authority have power to excuse payment of rates by any person liable therefor on the grounds of poverty (*i*). Justices have a similar power when considering an application for a committal warrant (see *ante*, p. 141). [337]

Practical Aspects of Rate Collection.—The matters dealt with above concern the legal powers of recovery which rating authorities possess; the practical side of the subject is equally important. The organisation of the collection should aim at efficiency in collection in accordance with the wide legal powers so as to avoid losses. At the same time it should ensure a minimum of irritation and inconvenience to ratepayers with equity as between one ratepayer and another. Thus, while the rating authority could, if they so desired, take legal steps within seven days of the making of the rate to recover by distress in accordance with their wide powers, this is not usually considered desirable or necessary. [338]

Book-keeping and Accounts.—The forms of books and the system of accounts to be adopted in the collection of rates have been prescribed by the Rate Accounts (Borough and Urban District Councils) Order, 1926, and the Rate Accounts (Rural District Councils) Order, 1926.

(*d*) R. & V.A., 1925, s. 2 (7); 14 Halsbury's Statutes 620.

(*e*) *Ibid.*, s. 5; *ibid.*, 625.

(*f*) *Ibid.*, s. 4 (4); *ibid.*, 624.

(*g*) *Hastings Corp'n. v. Queen's Hotel Co., Hastings, Ltd.* (1907), 97 L. T. 310; 43 Digest 1095, 255.

(*h*) R. & V.A., 1925, s. 4 (4) (*c*); 14 Halsbury's Statutes 624.

(*i*) *Ibid.*, s. 2 (4); *ibid.*, 620.

The forms must be used as prescribed, but additions which facilitate account keeping may be made; any material modifications require the consent of the Minister of Health.

Every rate collector must keep either a complete rate book, or a rate charge book together with a rate account book. The latter system is most suitable in rural districts, the rate charge book being a record of the rates due during the currency of a valuation list (with which it may be combined) and the rate account book being used for all records of payments, etc.

Where a rate book is kept, this combines the two functions and the rate charge book and the rate account book may be dispensed with. A rate book normally contains the following columns :

<i>Debit Side.</i>	<i>Credit Side.</i>
Assessment Number.	Owner's Allowances.
Occupier's Name.	Empty Allowances.
Dates from.....to.....	Other Allowances.
Owner, where owner rated instead of occupier.	Reason for other Irrecoverables.
Description of Property.	Cash Paid.
Name or Situation of Property.	Date or Number of Receipt.
Rateable Value.	Arrears carried forward.
Rate at.....in £.	
Arrears brought forward.	
Total Due.	

The question as to whether it is advisable to use the rate book system, or to use both the rate charge book and the rate account book must depend on local conditions. In rural districts the latter method is usual; in urban areas, the former. Variations of the usual form can be found, *e.g.* abridged rate books and sectional rate books divided into collector's districts, to suit the size of the authority and the type of the area. [339]

Other books which must be kept include the rate arrears book, summons list, and cost account.

The rate arrears book contains a record of all rates unpaid at the end of a half-year and shows how the arrears are dealt with in the next half-year, *i.e.* whether paid, proceedings taken for recovery, amounts written off with reasons therefor, etc. The summons list and cost account contains details of all persons summoned, and the amounts due in respect of costs.

There are also prescribed forms to be kept in respect of cash account (Form G.), receipt form (Form H.), account of receipt forms issued to collectors, and copy of schedules attached to demand notes (Forms J., K., and L.). The last-named contain copies of schedules which are attached to demand notes addressed to owners or others rated in respect of several hereditaments.

Rate collectors have certain duties to perform in respect of returns, etc., in connection with the collection. These are dealt with in the title **RATING AND VALUATION OFFICERS.** [340]

General Office Arrangements.—The general arrangements to be made for collection must be considered in the light of local conditions, bearing in mind the convenience of ratepayers. Thus, in scattered rural areas, local collection offices with collectors for separate districts will be found and no mechanical office appliances will, as a rule, be in use. On the other hand in large urban areas, the collection is usually centralised

with the collection of other income of the authority, and mechanical office appliances are frequently in use.

Some authorities have power to collect rates jointly with other income. This is frequently so in regard to water income, especially when the charge is based on rateable value. When such conditions exist, the arrangements for collection will need to take this into account.

[341]

The problem of control over collectors is important. Where the collection has been centralised, it will be a relatively easy matter to obtain effective checks. Where the collection is not centralised, frequent returns from the collectors are necessary and constant control is advisable, because any delay in taking legal steps for recovery may result in losses.

In addition to the greater amount of control, the following are some of the advantages of central collection :

- (i.) It is frequently more convenient to ratepayers than house-to-house collections.
- (ii.) Staff can be reduced and personal calls can be confined to difficult cases.
- (iii.) A collector can deal with more ratepayers at a central office than by personal visits.
- (iv.) Machines can be introduced.

The organisation should aim at an effective system of internal check. This will involve the separation of the duties of collection and clerical work on the actual rate books, requiring separate collectors and rental clerks, under the same or sectional chiefs. There should be independent verification of voids, arrears, and similar matters.

A fixed procedure as to recovery proceedings should be followed in all cases, except where individual circumstances otherwise dictate. Practice in this matter varies. Some authorities send one, some two or more final notices before issuing a summons, while others merely advertise their intention to commence legal proceedings to recover rates unpaid at the date of the notice. There is, of course, no legal necessity to give any notice, but it is very desirable. Summonses are not usually taken until at least half of the rate period has expired. [342]

Preparation of Rate Books and Demands.—The orthodox form of rate book is hand-written, but there is nothing to prevent the use of mechanical devices in the preparation thereof and this is frequently done with much advantage. This applies particularly to addressing machines ; but machines can be obtained which will produce simultaneously rate book, summary, personal ledger account (if desired) and demand note. This system necessitates the use of loose-leaf rate books, but it has been intimated that there is no objection to the use of loose-leaf books from the point of view of the M. of H., provided they are subsequently bound. This system may enable the demand notes to be produced simultaneously with the rate book. Where this does not operate the demand notes are either prepared by hand, with or without the aid of addressing machines, or, alternatively, special accounting machines may be used. Generally the larger the authority the greater the advantages of machines.

Demands may be served by hand or through the post. [343]

Receipt Forms.—The Rate Accounts Orders already referred to contain a prescribed form of receipt. In practice, however, this is frequently varied according to the needs of the various authorities. The old system frequently found in rural districts of having a duplicate

form of demand note and receipt is now practically obsolete. Where receipts are still made out by hand, the manifold self-adding kind of receipt book is generally used, with the copy produced by means of a carbon duplicate, although the counterfoil system may still be in use. Where, however, the collection has been centralised and the size of the authority warrants the outlay, it is usual to find either the cash register system or the rate receipting machine. [344]

Collection by Instalments.—This is a matter which requires careful consideration. Although there is no legal duty on the rating authority to accept weekly or other instalments (except as already indicated on p. 143, *ante*), it is frequently advisable to do so; especially where compounding is not in force. Such a system requires additional records to be kept, because the details cannot be entered in the limited space available in the ordinary rate book. It is usually necessary to keep a separate personal account for all such cases and transfer the totals to the rate book at the end of the period. The methods used must depend on local circumstances. In some cases stamps are used as the basis of the collection and in others weekly cards similar to rent cards are in use.

The greater the number of people paying by instalments, the greater the cost of collection, and the practice should not be encouraged except where it is likely to be the most effective method of collection. [345]

Summons, Distress and Commitment.—The legal provisions in regard to summons, distress and commitment have been dealt with above (pp. 139–141). The usual reminders, if any, should be sent out at a reasonably early date and then a summons list prepared. It is frequently advisable to include persons in this list on whom it is not intended to distrain. Legal process is the rating authority's final means of enforcing payment, and should be enforced on an equal basis so as to obviate unfair preference or unnecessary losses. This does not mean that distress and commitment should be regarded as inevitable in all cases. Where a ratepayer is doing his best to pay, and will do so if given time, it is not desirable to distrain on his home. On the other hand, so far as committal to prison is concerned, there may be circumstances in which it is desirable to bring a defaulter before the Magistrates, even though actual imprisonment is not desired. [346]

It has already been pointed out (paragraph 324) that the Money Payments (Justices Proceedure) Act 1935, prevents the magistrates from issuing a warrant of commitment unless they first inquire in the presence of the defaulter as to his means to enable them to decide whether his default is due to his culpable neglect or his wilful refusal to pay. If they are satisfied that his failure to pay is not due to one of these causes they have no right to issue a warrant of commitment and it follows, therefore, that no person can be committed to prison for non-payment, except for his own culpable default.

The method of executing a distress warrant varies. In some cases the warrant is executed by the police, in some by an independent bailiff, and in others by a special warrant officer appointed by the rating authority. In all cases adequate records must be kept and official receipts given. [347]

Recovery from Persons Removing.—It is now sometimes provided in local Acts that distress may be levied on defaulting ratepayers who are leaving the district without the necessity for applying for a summons

in the first instance. This is a valuable power as it obviates undesirable delays. [348]

Losses in Collection.—The losses which arise in the course of rate collection may be summarised as shown below.

Voids.—No rates are payable when property is entirely unoccupied. Forms for claiming the necessary allowances should be completed by the incoming and outgoing occupiers, and, where desirable, by the owners as well. These should be verified by actual inspection. [349]

Irrecoverables.—These will arise from various causes which make it impossible to recover the amounts due, chiefly in cases of bankruptcy and absconding ratepayers. In the former case, final notices of dividends is sufficient authority; but allowances in the other cases should only be made after careful inquiry. [350]

Excusals.—It has already been pointed out that rating authorities have power to excuse payment of rates on the grounds of poverty of the person liable. This requires close attention. Excusal forms should be completed in each case and careful independent inquiries made. The amounts should only be allowed with the consent of the rating authority. [351]

Rate Refunds.—Rates overpaid as a result of voids or reductions in rateable values are to be refunded, and this should be done on the written application of the ratepayer. This applies to amounts in respect of either current or previous rates. The amount refunded is to be treated as an amount written off in the current period and added to the amount of the irrecoverables and deducted from the cash paid. Where the amount is refunded in respect of voids for a period of the rate which has not expired, the amount should be redebited in the rate book either at the end or in a special column, and any subsequent payments or allowances posted against that item (*k*). [352]

(*k*) S.R. & O., 1926, Nos. 1178 and 1123.

RATE ESTIMATES

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See also titles :

BUDGETARY CONTROL ;
FINANCE COMMITTEE ;
FINANCE DEPARTMENT ;
GENERAL RATE ;

PENNY RATE ;
PRECEPTS ;
SPECIAL RATE.

Introduction.—An annual budget is an indispensable feature of local as well as of national finance. Before the amount of the rate levy can be determined it is necessary to measure both the sum total of the

estimated expenditure to be met and the extent of the sources of revenue. County councils alone are under a direct statutory obligation to prepare an annual budget, but for all local authorities (including county councils) the preparation of estimates is necessary in order that they may give effect to the duty imposed upon them to levy sufficient rates (or precepts). But while the primary purpose of preparing estimates is to arrive at the amount of rate to be levied or precepted, their secondary function as a means of budgetary control is almost of equal importance. As a rule rate estimates set out in considerable detail a plan of expenditure and income, against which may be measured, during and at the end of the year, the course and final results of the authority's financial transactions. Rate estimates are therefore an important instrument of financial control. [353]

Statutory Provisions.—Under sect. 182 of the L.G.A., 1933 (*a*), every county council must cause to be submitted to them before the commencement of every financial year an estimate of the income and expenditure of the council during that year, whether on account of property, contributions, rates, loans or otherwise. (The latter words appear to impose a duty to prepare capital estimates as well as revenue estimates—see “Capital Estimates,” *post*). The council must estimate the amounts required to be raised in the first six months and in the second six months of the financial year by means of precepts; if before the expiration of the first half-year, it appears that the amounts originally estimated will be greater or less than is necessary, the council may revise the estimate. Every local authority (*b*) is bound by sect. 12 (1) of the R. & V.A., 1925 (*c*), to make such rates or issue such precepts as will be sufficient to provide for such part of the total estimated expenditure to be incurred by the authority, during the period in respect of which the rate is made or precept is issued, as is to be met out of moneys raised by rates; such expenditure must include any sums payable under precepts to any other authority, together with such additional amount as is in the opinion of the authority required to cover expenditure previously incurred, or to meet contingencies, or to defray any expenditure which may fall to be defrayed before the date on which the moneys to be received in respect of the next subsequent rate or precept will become available.

Any charge for interest, or loss of interest, arising from failure through wilful neglect or wilful default to make (or collect) such rates or to issue such precepts as are necessary to cover the expenditure of the authority for any financial year (including any previous deficiency) may be the subject of surcharge by a district auditor (*d*).

Demand notes for rates must contain particulars of the amounts in the pound which are being levied for the purposes of each service, or group of services, administered by the rating authority and by the precepting authority (if any), in respect of which a separate fund account is kept (*e*). [354]

The effect of these provisions is that all rating authorities must

(a) 26 Halsbury's Statutes 405.

(b) Any body having power to levy a rate, or to issue a precept to a rating authority; R. & V.A., 1925, s. 68; 14 Halsbury's Statutes 687.

(c) 14 Halsbury's Statutes 636.

(d) L.G.A., 1933, s. 228 (2); 26 Halsbury's Statutes 429.

(e) R. & V.A., 1925, s. 7 (1); 14 Halsbury's Statutes 626, and the Rating and Valuation (Forms of Demand Note) Rules, 1930 (S.R. & O., 1930, No. 542); 14 Halsbury's Statutes 853.

levy rates and all precepting authorities must issue precepts which are sufficient to provide for (1) the estimated expenditure of the rate period, including in the case of rating authorities the requirements of precepting authorities; (2) any existing deficiency in the rate or county fund; (3) contingencies; and (4) a working balance to finance the authority's expenditure pending the collection of rate moneys in the succeeding rate period. But while (1) must be "estimated," (2), (3) and (4) are apparently governed by the words "in the opinion of the authority," and it has been held that these words require less precision than the word "estimated" (f).

The period for which rate estimates are prepared is almost invariably the financial year, notwithstanding that rates or precepts may be levied half-yearly. In the latter event the estimates must be revised before the rate for the second half-year is approved by the council. [355]

Preparation and Approval.—The procedure governing the preparation, submission and approval of estimates is usually laid down by the authority's standing orders or financial regulations. There are many differences in practice, but it is fairly common for each spending committee to consider the draft detailed estimates of income and expenditure under their control, as prepared by the chairman and chief officer of the committee, acting in conjunction with the chief financial officer, and to approve them with such amendments as they think fit. When this process has been completed by every spending committee, a final summary of the estimates is prepared and submitted to the finance committee together with a report by the chief financial officer. Amounts called for by precepting authorities (if any) are included in the summary, which may show also the poundage of rate represented by the aggregate net estimated expenditure. The finance committee may then make such amendments as they think are necessary to the estimates (preferably after consultation with the committees concerned, or with their chairmen), and submit the final estimates to the council, with a recommendation as to the amount of the rate or precept to be levied. Finally, the estimates are approved, with or without amendment, by the council.

Consideration of estimates by committees usually takes place in January or February, final approval being given in March or early in April; in the case of county councils earlier action must be taken, however, in order that information as to the amount of the precept may be transmitted to the rating authorities concerned by the appropriate date (see title PRECEPTS).

In considering the collated estimates, together with the amounts required by precepting authorities, the finance committee will have regard to the rate poundage which they represent, in relation to the current rate, the recent trend of rate levels, and the general economic conditions of the district, before making their recommendation to the council as to the rate to be levied or precepted. Very often it is necessary that the estimates should be reduced in order to maintain the rate at its current figure, or to avoid too large an increase; in some cases reductions are made without reference to the spending committees, but generally there is some consultation or discussion with the com-

(f) See judgment of the Recorder in *Morgan v. Cardiff R.A.*, Cardiff Quarter Sessions, January 25, 1933 (also referred to *post*, p. 153, under the heading "Working Balance").

mittees concerned or with their chairmen. Sometimes the review is done by a special Budget Committee consisting of the Finance Committee and the chairmen of the various spending committees. The finance committee may specify the items which are to be reduced by certain amounts, or they may indicate that the committee's estimates are to be reduced by an amount to be applied as the spending committee decide.

Some authorities have adopted a system of "rate stabilisation" and "rate-rationing," under which the estimated product of the rate levied at the pre-determined amount is apportioned by the council on the finance committee's recommendation among the spending committees on an equitable basis, having regard to the current year's expenditure and to new commitments which will come into charge during the ensuing year. This is almost a complete reversal of the system described above; the estimates when approved by the spending committees will conform in total with the allocations already made by the council, and the finance committee's approval is largely a formality, since that committee's function of financial control has been fulfilled in determining the original allocation. [356]

Form and Content.—There is no prescribed form of estimate, and there are wide divergencies of practice; bearing in mind, however, the two purposes—rate levy and budgetary control—which the estimates should serve, it is thought that the following general principles should be observed in preparing rate estimates for the period of a year:

- (1) For each item of expenditure and income, details should be shown of (a) the actual amount in the year preceding the current year; (b) the estimate for the current year; (c) the approximate actual amount for the current year; and (d) the estimate for the ensuing year.
- (2) Expenditure and income should be classified first by committees, so that each committee may accept responsibility for the cost of the services which they control; secondly by departments and services, to show the net cost of each branch of the committee's operations; and ultimately the departmental and service items should be sub-divided over significant headings, corresponding, *e.g.* with the sub-heads in prescribed or standard forms of accounts.
- (3) In grouping items, distinction should be made between (a) ordinary recurring expenditure and income relating to general maintenance and upkeep; (b) non-recurring or extraordinary expenditure and income; and (c) loan charges (separating, perhaps, loan charges on new or contemplated loan expenditure).
- (4) The summary of estimates should show clearly the estimated net expenditure of each committee in relation to the comparative figures of the previous years included.

Rate estimates may usefully be supported by statistics, *e.g.* of employees, of road mileage, of numbers of scholars, etc., and may be illuminated by comparative cross classifications, *e.g.* of total expenditure of all committees on salaries and wages, travelling expenses, printing and stationery, etc. [357]

Contingencies.—Apart from the legal obligation to include in the rate estimates such additional amount as is in the opinion of the authority required to meet contingencies, it is desirable on grounds of financial prudence that some provision should be made for meeting

expenditure which may arise through unforeseen circumstances such as epidemics of disease, snow clearing, litigation or other exceptional causes. Generally, one contingency fund is provided for all services, and for two reasons this is to be preferred to separate provision for contingencies for each committee or department; the amount needed is smaller than would be the aggregate of separate provisions, and the exclusion of contingency provision from committee estimates ensures that the finance committee shall be consulted on any proposal that expenditure shall be met as a contingency item. In deciding upon the amount of the contingency fund, regard should be had to past experience, coupled with any special circumstances such as a rising curve of prices; sometimes the amount may be determined as a small percentage of total expenditure. The inclusion of a specific amount for contingencies in the estimates is not a universal practice; in some cases a working balance (see *infra*), is maintained which is of sufficient amount to provide for contingencies in addition to its normal purpose. [358]

Supplementary Estimates.—While it should be the duty of every committee to keep their expenditure within the approved estimates for the year, standing orders should provide machinery for the consideration and approval of expenditure in excess of estimates, *i.e.* in effect, for the authorised disbursement, if and when necessary, of the contingency fund. Supplementary estimates arising during the year should follow the procedure outlined for the annual estimates. When it is apparent to a spending committee that the amount of expenditure provided for any head of service in the approved estimates is likely to be exceeded, or that expenditure is to be incurred for which no provision is included in the estimates, a proposal for a supplementary estimate for the amount of the anticipated excess or expenditure should be forwarded through the finance committee for the council's consideration. The finance committee's scrutiny of such a proposal will be directed to ascertain whether it is urgent or necessary in character; and if it is one which might on financial grounds be delayed, they may recommend the council to defer the expenditure for inclusion in the following year's estimates. It is obvious that a carefully drawn budget may quite easily be unbalanced by any considerable number and amount of supplementary estimates, and the finance committee's attitude must therefore be one of severe challenge to the real necessity of every supplementary estimate brought before them. [359]

Complementary to the question of over-spending is that of under-spending, which involves consideration of the doctrine of *virement*, *i.e.* the setting-off of savings on one head of expenditure against over-spending on another. It is thought that where this is allowed it should be done only with the sanction of the finance committee. In such circumstances the finance committee would, on considering a supplementary estimate, inquire whether the proposed over-spending could be met by savings on some other head of service, and their approval might be conditional on this being done. Indeed, there are cases where the approval of what might be termed normal supplementary estimates is invariably conditional upon savings of corresponding amount being made on other heads of the spending committee's estimates of expenditure. [360]

Working Balance.—It is the general practice for local authorities to keep a fairly large balance on rate fund account which primarily

functions as working capital, and also provides either the principal or a supplementary fund for meeting contingencies. The obligation to maintain a working balance may be imported from that part of sect. 12 of the R. & V.A., 1925 (*g*), which provides that the rate estimates must include such additional amount as is, in the opinion of the authority, required to defray expenditure which falls to be met before the moneys of the next rate period are received. On the other hand, sect. 215 of the L.G.A., 1933 (*h*), authorises a local authority, without the consent of any sanctioning authority, to borrow moneys by way of temporary loan for the purpose of defraying expenses pending the receipt of revenues receivable by them in respect of the period of account in which those expenses are chargeable and taken into account in the estimates made by the local authority for that period. It may be, therefore, that a local authority could refrain from carrying a working balance and rely entirely upon the power to borrow temporarily in order to finance expenditure during the early part of the rate period ; but this would entail the risk that if, on account of heavy unforeseen expenditure, there were, during the latter part of the rate period, a deficiency in the rate fund which involved a charge for interest (*i.e.* on bank overdraft), there would be grounds on which a district auditor could surcharge the amount of that interest as a loss or deficiency under sect. 228 of the L.G.A., 1933 (*i*) (see *supra*). [361]

Hence it would appear that on grounds both of legal necessity and of financial wisdom a working balance should be maintained. It should be the subject of annual review, and adjusted from time to time according to any change of circumstances such as variation in the scale of expenditure, or methods of finance, or of relations with pre-cepting authorities or rating authorities. All too frequently, from the point of view of sound finance, appropriations are made from the working balance in order to reduce the rate or to avoid an increase. Little criticism can be aimed at the fairly general practice of making small adjustments in the working balance in order to avoid temporary rate fluctuations and to eliminate fractions of a penny from the rate poundage, but, if only for the reason that once a balance is applied in rate reduction this process cannot be repeated, it is considered to be unsound practice for any substantial sum to be appropriated from the working balance in aid of rate. If the working balance has through fortuitous circumstances (*e.g.* exceptional growth of rate income or fall of expenditure) grown to an amount in excess of that required, it is thought that the excess amount should, following the general rule governing surpluses in the national finances, be applied to redemption of debt. It was made clear in *Morgan v. Cardiff R.A.* (*k*), that a rating authority is not entitled to form a fund for equalising rates from year to year, or to use the working balance to secure that object ; but what is done as to the maintenance of a working balance and the alteration of its amount is a matter for the authority to decide and a matter on which, as long as it acts in good faith, its opinion must be decisive (*l*). [362]

Capital Estimates.—It is necessary in preparing rate estimates, which include only expenditure to be met out of revenue, to have regard to

(*g*) 14 Halsbury's Statutes 636.

(*h*) 26 Halsbury's Statutes 422.

(*i*) *Ibid.*, 429.

(*k*) Cardiff Quarter Sessions, January 25, 1933.

(*l*) *Ibid.*, from the Recorder's judgment.

capital expenditure which is to be met out of loan during the year, in order that provision may be made for the appropriate loan charges to be included. In some cases, as a preliminary to the consideration of the rate estimates, capital estimates are prepared and considered by the council; indeed, in the case of county councils, there would appear to be an obligation to prepare them under sect. 182 of the L.G.A., 1933 (*m*) (see *ante*, p. 149). Such estimates should contain details of capital schemes, which are proposed to be financed by loan, distinguishing for the guidance of the council between those which have been approved in principle by the council and those which are under consideration by the spending committees. The statement should show the approximate rate of progress, the estimated loan charges, and other expenses (*e.g.* for maintenance) which they will involve during the coming year. The appropriate provision would then be made in the revenue estimates according to the extent to which approval is given by the council to the capital estimates. Apart, however, from the preparation of annual capital estimates as a supplement to the rate estimates, some local authorities consider each year capital estimates for the ensuing three or five years or more. The Committee on Local Expenditure (England and Wales) in their report (*n*) urged that it is necessary to take a long view of capital expenditure, and that local authorities, by having regard to capital expenditure likely to be incurred during the next three or five years, are in a position to appreciate the cumulative effect of the various capital commitments into which they may be proposing to enter. The M. of H. have also drawn attention (*o*) to the need for systematic and considered budgeting of capital for a number of years ahead as a necessary administrative measure for securing proper control; in May, 1938, the M. of H. issued a circular (*p*) asking local authorities to prepare programmes of capital works for the specific period of five years commencing 1st April, 1938, and to furnish summaries of the programmes to the Ministry. It was urged in the circular that a long-term view of questions of capital expenditure might be of special importance not only in order to secure the smooth progress of local authorities' operations but as a matter of national economic policy, inasmuch as it would furnish a basis of contribution towards the stabilisation of industrial conditions, particularly in the building industry. Programmes could be arranged in an order of priority which would be settled by the council after the schemes of the various spending committees had been co-ordinated by the finance committee or by a special committee; and while the order would be initially determined by considerations of relative urgency the programme would be capable of being varied, accelerated or retarded on an annual review, having regard to current conditions of costs, labour supply and other factors, including the economic circumstances of the area. (See also title BUDGETARY CONTROL, Vol. II., p. 265.) [363]

(*m*) 26 Halsbury's Statutes 405.

(*n*) Cmd. 4200, 1932.

(*o*) *E.g.* see Annual Reports for 1929-30 (p. 131), and 1934-1935 (p. 193).

(*p*) No. 1687, dated 6th May, 1938.

RATE FUND SERVICES

See GENERAL EXCHEQUER GRANTS.

RATES AND RATING

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See also titles :

ASSESSMENT COMMITTEE ;
ASSESSMENT FOR RATES ;
CENTRAL VALUATION COMMITTEE ;
COUNTY VALUATION COMMITTEE ;
DIFFERENTIAL RATING ;
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LONDON, RATING IN ;
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RAILWAYS, RATING OF ;
RATE COLLECTION ;
RATING APPEALS ;
RATING AUTHORITIES ;
RATING OF OWNERS ;
RATING OF SPECIAL PROPERTIES ;
SPECIAL RATES ;
VALUATIONS FOR RATING ;
VALUATION LIST.

Introduction.—The rating system in England and Wales has undergone considerable modification, particularly in recent years, but, in the main, its authority is still derived from the Statute of Elizabeth (*a*) which gave power to overseers of the poor to raise, by taxation of every inhabitant, parson, vicar and other, and of every occupier of lands, houses, tithes impropriate or propriations of tithes, coal mines or saleable underwoods in the parish, competent sums of money for the relief of the poor, which sums were to be gathered out of the parish according to the ability of the parish to pay them. Some of the properties and persons rateable under this statute have since been exempted, and some not included in the statute have been made liable. The inhabitant as such is no longer rateable.

As the original basis of rating in the statute was ability to pay, it was held that in estimating such ability, the profits from stock-in-trade, or any other property should be taken into account (*b*). Such profits were, however, exempted by an Act of 1840 (*c*). An Act of 1836 (*d*) had before that provided that assessments were to be based on an estimate of the rental value of property, but doubt had remained whether in such rental value stock-in-trade was to be included. The effect of the two Acts was to release the inhabitant as such from liability to be rated, except in so far as he was an occupier, and to establish

(*a*) The Poor Relief Act, 1601, s. 1 ; 14 Halsbury's Statutes 477.

(*b*) *Sir Anthony Earby's Case* (1633), 2 Bulst. 354 ; 38 Digest 423, 1.

(*c*) The Poor Rate Exemption Act, 1840 ; 14 Halsbury's Statutes 504.

(*d*) The Parochial Assessments Act, 1836, s. 1 ; definition "rateable value" ; 6 & 7 Will. 4, c. 96.

as the principle on which rates are still levied that the occupier is to be assessed at an amount representing the true rental value of his occupation (*e*). Since the Statute of Elizabeth sporting rights have been made rateable, and mines of every kind (*f*). In some cases the owner may now be rated instead of the occupier (*g*), but such exceptions to the rule are comparatively few. [364]

Exemptions.—Government property, that is, property occupied by or on behalf of the Crown for public purposes, has never been rateable (*h*) except in particular cases (*i*). Among properties originally rateable under the Act of 1601 which have since been exempted are the residences of Ambassadors and their servants (*k*); lighthouses, buoys and beacons (*l*); non-provided schools (*m*); scientific, literary and art societies (*n*); polling stations at parliamentary elections (*o*), and at elections of county and borough councillors (*p*).

In addition to these certain machinery formerly held to be rateable as being part of the hereditament in occupation is no longer to be assessed (*q*) and agricultural land and buildings (other than dwelling houses) are relieved of all rates (*r*). In some cases also, exemptions and privileges have been granted under local Acts and are still in force (*s*). Churches and chapels and premises exclusively appropriated to public religious worship are exempted by the Poor Rate Exemption Act, 1833 (*t*); and the premises are not made liable because they are used as a Sunday school or infant school or for the charitable education of the poor (*u*), and Sunday and ragged schools may themselves be exempted (*a*). [365]

The General Rate.—In place of the poor rate levied under the Statute of Elizabeth in urban areas there is now one consolidated rate, the general rate, in which are merged the poor rate, general district rate, borough rate, lighting and watching rate, library rate, and any other rate the proceeds of which were applicable to local purposes of a public nature, and which were levied on the basis of the yearly value of property (*b*).

(*c*) Cf. R. & V.A., 1925, s. 68, definition "gross value," and s. 22 (1) (*b*) definition "rateable value"; 14 Halsbury's Statutes 687 and 646.

(*f*) Rating Act, 1874, s. 3; 14 Halsbury's Statutes 586.

(*g*) Cf. The Advertising Stations (Rating) Act, 1889; 14 Halsbury's Statutes 597; The Rating Act, 1874 (*supra*) (owner of sporting rights); R. & V.A., 1925, s. 11 (1) (compulsory rating up to £13 rateable value); 14 Halsbury's Statutes 632; *ibid.*, s. 23 (1) (house let out in parts); 14 Halsbury's Statutes 649.

(*h*) See title ASSESSMENT FOR RATES and R. & V.A., 1925, s. 64 (3); 14 Halsbury's Statutes 684.

(*i*) Cf. The Telegraph Act, 1868, s. 22; 19 Halsbury's Statutes 250.

(*k*) Diplomatic Privileges Act, 1708; 3 Halsbury's Statutes 503.

(*l*) Merchant Shipping Act, 1894, ss. 634, 731; 18 Halsbury's Statutes 379, 407.

(*m*) The Education Act, 1921, s. 167 (1); 7 Halsbury's Statutes 211.

(*n*) Scientific Societies Act, 1843, s. 1; 10 Halsbury's Statutes 477.

(*o*) The Ballot Act, 1872, s. 6; 7 Halsbury's Statutes 431.

(*p*) L.G.A., 1933, Sched. II, Part III, para. 4 (3); 26 Halsbury's Statutes 480.

(*q*) R. & V.A., 1925, s. 24; 14 Halsbury's Statutes 650.

(*r*) L.G.A., 1929, s. 67; 10 Halsbury's Statutes 927.

(*s*) R. & V.A., 1925, s. 64 (1) (*b*), (*c*); 14 Halsbury's Statutes 683.

(*t*) S. 1; 14 Halsbury's Statutes 500.

(*u*) S. 2; 14 Halsbury's Statutes 501, and see title ASSESSMENT FOR RATES, Vol. I., p. 469.

(*a*) Sunday and Ragged Schools (Exemption from Rating) Act, 1869, s. 1; 14 Halsbury's Statutes 545.

(*b*) R. & V.A., 1925, s. 2 (1); and s. 68 (1), definition "rate"; 14 Halsbury's Statutes 618, 686.

In rural areas there is not the same consolidation of rates. The general rate takes the place of the poor rate, but the separate expenses of individual parishes in the rating area, such for instance as expenses under the Allotment Acts, Burial Acts, or Lighting and Watching Acts, make it impossible to levy one consolidated rate at an equal figure throughout the area. Provision is therefore made for the levying of special rates, or additional items of the general rate (*c*).

Thus special rates are to be made in lieu of any rate to meet expenditure under the Lighting and Watching Act, 1833 (*d*), and of any rate in respect of special expenses under the Acts relating to public health (*e*). Any amount, other than an amount to be raised by special rate, which is chargeable separately on any part of the rating area, whether urban or rural, is to be levied on that part of the rating area as an additional item of the general rate, as *e.g.* expenses under the Public Libraries Acts, 1892 to 1919, of the library authority of a parish (*f*).

By sect. 2 (3) of the 1925 Act, the general rate is made at a uniform amount per pound on the rateable value of each hereditament in the rating area and is levied on the rateable values appearing in the valuation list in force at the time when the rate is made (*ibid.*, sect. 20 (1)). The rate is made on the date on which it is approved by the rating authority (*ibid.*, sect. 4 (1)) who have no power to delegate their duty in this respect (*ibid.*, sect. 1 (3)), and is for a period fixed by the rating authority; the period of each general rate commencing immediately after the expiration of the last preceding period (*ibid.*, sect. 4 (2)). [366]

Differential Rating.—There are no specific provisions for differential rating in the enactments relating to the provisions which may be inserted in an order for the extension of a borough or urban area, but the allowance of an abatement from rates seems to be authorised by the provisions which allow the inclusion in the order of all matters which appear necessary for bringing into operation and giving full effect to the order (*g*). A supplementary rate may be levied if the requirements of the area make it necessary (*h*). Differential rating may also arise as a result of amounts levied on part of a rating area by way of additional items of the general rate, and, in rural rating areas, as a result of the varying rate poundages necessary to meet the precepts of the different parish councils. [367]

Recovery of the Rate.—The general rate and any special rate is made, levied and collected, and is recoverable in the same manner in which the poor rate was made, levied, collected and recovered (*i*). Some additional powers are now, however, given to the rating authority which were not available to the overseers of the poor. Thus the rate is made by the rating authority and the sanction of the justices is no longer needed (*k*). Demand of the rate may be made, and a summons served, by post and may be addressed to the "owner" or "occupier" without further name or description (*l*). Owners of houses let out in

(*c*) R. & V.A., 1925, s. 3 (1); 14 Halsbury's Statutes 621.

(*d*) 8 Halsbury's Statutes 1186.

(*e*) R. & V.A., 1925, s. 3 (1); 14 Halsbury's Statutes 621.

(*f*) S. 2 (5), (6); *ibid.*, 620.

(*g*) See s. 59 (4) (*d*), (*e*) of the L.G.A., 1888; 10 Halsbury's Statutes 735; and s. 148 (1) of the L.G.A., 1933; 26 Halsbury's Statutes 386, and see title DIFFERENTIAL RATING, Vol. IV., p. 372.

(*h*) R. & V.A., 1925, s. 4 (6); 14 Halsbury's Statutes 624.

(*i*) Ss. 2 (3) and 3 (2); *ibid.*, 619, 622.

(*k*) Ss. 2 (1), (2); 4 (1); *ibid.*, 618, 619, 623.

(*l*) S. 59 (1), (2); *ibid.*, 680.

parts may be rated instead of the occupiers (*m*) and on the other hand rates may now be collected in some cases from tenants and lodgers who before were not liable (*n*). Owners of property up to £13 rateable value (or in certain circumstances a higher limit) may be rated instead of the occupiers, subject to an allowance to be made from the amount of the rate of 10 to 15 per cent. (*o*), or the rating authority may make an allowance to owners who agree to pay the rates instead of their tenants. If the owners agree to pay the rates chargeable whether the hereditament is occupied or not, they may be granted an allowance not exceeding 15 per cent. ; if they undertake to pay the rates so long as the hereditament is occupied, $7\frac{1}{2}$ per cent. ; or if they undertake only to collect the rates from the occupier, 5 per cent. (*p*). In the last case the owners are required to pay over to the rating authority only the rates which they are able to collect (*q*). The rating authority may also if they think fit make an allowance of $2\frac{1}{2}$ per cent. discount to every person who pays the rate due by a prescribed date. But such discount allowance is not available to an owner who is entitled to any of the allowances under sect. 11 referred to above (*r*).

The sanction of the justices is no longer needed to the excusal of poor persons. The rating authority themselves now have power to excuse the whole or part of the rate on account of the poverty of the person liable (*s*). The justices, however, on application for commitment of a person for non-payment of the rate are empowered to remit payment, and no person may be committed who proves to the satisfaction of the justices that his failure to pay is due to circumstances beyond his control (*t*). [368]

Assessment for Rates.—Changes have also been made in the procedure of assessment for rates. All rating areas are to be revalued every five years (*u*).

The rating authority is given power to employ valuers and authorise them to enter on, survey, and value any hereditaments in the area of the authority and there is a penalty of £5 for wilful delay or obstruction by any person to the exercise of this power (*a*). Owners and occupiers may be required under penalty to make return of particulars relating to any hereditament which may be reasonably required for the purposes of the Act (*b*). The deductions to be made from the gross value in arriving at the rateable value are now fixed by Statute, and in certain cases a gross value is no longer required (*c*). [369]

Industrial and Freight Transport Hereditaments.—Factories and workshops, mines, mineral railways, and railways, canals and docks

(*m*) R. & V.A., 1925, s. 23 ; 14 Halsbury's Statutes 649. This does not apply to a building constructed for the purpose of flats or dwellings.

(*n*) S. 15 ; *ibid.*, 639.

(*o*) S. 11 (1) ; *ibid.*, 632 ; L.G.A., 1929, s. 71 ; 10 Halsbury's Statutes 930 ; R. & V.A., 1928, s. 3 (1) ; 14 Halsbury's Statutes 710.

(*p*) S. 11 (2) ; 14 Halsbury's Statutes 634.

(*q*) S. 11 (5) ; *ibid.*, 635.

(*r*) S. 8 ; *ibid.*, 627 ; and see title DISCOUNT FOR RATES.

(*s*) S. 2 (4) ; 14 Halsbury's Statutes 620.

(*t*) S. 2 (3) (*b*) ; *ibid.*, 619 ; and see Money Payments (Justices Procedure) Act, 1935.

(*u*) S. 19 of the 1925 Act ; 14 Halsbury's Statutes 644.

(*a*) S. 38 ; *ibid.*, 667.

(*b*) Ss. 40, 41, 42 ; *ibid.*, 668—670.

(*c*) S. 22 and Sched. II., *ibid.*, 646, 692. Revised by R. & V.A., 1928, s. 2 ; *ibid.*, 709, continued by R. & V.A., 1932 ; 25 Halsbury's Statutes 537.

are no longer rateable on the full value (*d*). Where the hereditament is wholly industrial or freight-transport, rates are to be charged on one fourth only of the net annual value (*e*). If partly industrial or for freight-transport purposes, and partly for other purposes, rates are to be charged on one fourth of the net annual value of the part industrial or freight-transport, and on the full net annual value of the part used for other purposes (*f*). [370]

Machinery and Plant.—Some plant and machinery is now no longer rateable. Before the R. & V.A., 1925 (*g*), came into force all machinery on premises used for the business of the occupier was rateable, whether affixed to the freehold or not, and whether provided by the owner or the occupier (*h*). Now only such plant and machinery as is specified in the Act, and set out in detail in the Order of the Minister (*i*) is to be rated.

The amendments made by the R. & V.A., 1925-1932, do not, however, alter the principles on which assessments for rates are made. The general rate is made, levied and collected, and is recovered in the same manner as the poor rate was made, levied, collected and recovered, and all the enactments relating to the poor rate, including enactments relating to appeals against a poor rate, apply to the general rate (*k*). The new provisions relating to the collection of rates from owners, the rating of machinery, agricultural, industrial and freight-transport hereditaments, and others, do not affect the principles on which valuations are made and rates levied. [371]

The Rating Authority is in the first instance responsible for the making of the rate and the preparation of the valuation list (*l*). The powers and duties of the overseers of the poor in relation to the making, levying and collection of rates were transferred by the R. & V.A., 1925 (*m*), to the councils of the county boroughs, and the urban and rural districts, who are constituted the rating authorities.

The councils may delegate certain of their functions as rating authorities to committees appointed by them, but the levying of a rate or the appointment of persons to act as members of an assessment committee cannot be so delegated (*n*). The rate is levied on the values appearing in the valuation list, in so far as the hereditaments therein are rateable (*o*). If the values appearing in the valuation list are deemed by the rating authority to be incorrect or unfair they may make a proposal at any time for the amendment of the list (*p*). The basic principle of valuation for rating is laid down in the definition of

(*d*) See titles DERATING and RAILWAYS, RATING OF.

(*e*) L.G.A., 1929, s. 68 (1) (a); 10 Halsbury's Statutes 928.

(*f*) R. & V. (Apportionment) Act, 1928, s. 4; 14 Halsbury's Statutes 717, and see title DERATING.

(*g*) S. 24; 14 Halsbury's Statutes 650.

(*h*) Cf. *Smith(s) & Sons (Motor Accessories), Ltd., v. Willesden Union Assessment Committee* (1919), 89 L. J. (K. B.) 137; 83 J. P. 233; 38 Digest 534, 792.

(*i*) The Plant and Machinery (Valuation for Rating) Order, 1927; S.R. & O., 1927, No. 480; 14 Halsbury's Statutes 793; and see title MACHINERY, RATING OF.

(*k*) R. & V.A., 1925, s. 2 (3); 14 Halsbury's Statutes 619.

(*l*) *Ibid.*, s. 2 (1), (2), and s. 25; *ibid.*, 618, 619, 652.

(*m*) S. 1 (2); *ibid.*, 618.

(*n*) L.G.A., 1933, s. 85 (1), (5); 26 Halsbury's Statutes 352, 353; L.G.A., 1929, s. 15 (1); 10 Halsbury's Statutes 892.

(*o*) R. & V.A., 1925, s. 20 (1); 14 Halsbury's Statutes 645.

(*p*) S. 37 (1); *ibid.*, 664.

gross value (*g*) and it is an obligation on all authorities concerned to see that every assessment conforms to that rule. Unless a valuation represents the rent at which the hereditament might reasonably be expected to let from year to year, it is not a true valuation for rating purposes. [372]

The Assessment Committee (*r*) are entrusted with the revision of the draft valuation list, when it is submitted to them by the rating authority, and they hear and determine any objection that may be made to it (*s*) or any proposal for the amendment of the valuation list (*t*).

The assessment committee are part of the organisation set up under the R. & V.A., 1925, to promote uniformity in the valuation of property for the purpose of rates. They are concerned, therefore, not only with the values of property in a particular rating area, but have a duty to see that all the rating areas within their jurisdiction are equally and fairly assessed under uniform principles of valuation. [373]

The County Valuation Committee (*u*) exercise to some extent the same functions and for the same purpose as the assessment committee. As the assessment committee have the task of securing uniformity throughout the assessment area, so the county valuation committee is for the purpose of promoting the same uniformity within the county. Power is given to them, for this purpose, to call assessment committees, including the assessment committees of county boroughs, into conference with them; to join with other county valuation committees in holding such conferences; and to advise rating authorities and assessment committees of any conclusions they have arrived at, or recommendations they have made. To assist them in their work, the committee are entitled to establish a county panel of valuers to value properties throughout the county on their behalf and to place the valuations at the disposal of the rating authorities (*a*) and they may appoint a valuer to give advice or assistance in connection with the valuation of any hereditaments in their area (*b*).

Finally, if they are aggrieved by the incorrectness or unfairness of any matter in the list in any rating area, the committee can object to the draft list or may make proposals for the amendment of the valuation list. [374]

The Central Valuation Committee (*c*) are appointed for the purpose of promoting uniformity, as far as they can, in the application of the principles of valuation throughout England and Wales, outside London (*d*). So far the Metropolis does not come within their purview. Their function is advisory only, and they cannot enforce their views by objection, or proposal for the amendment of a valuation list. Their recommendations have been published and circulated by the Minister

(*g*) R. & V.A., 1925, s. 68; 14 Halsbury's Statutes 687.

(*r*) See title ASSESSMENT COMMITTEE, Vol. I, p. 446.

(*s*) S. 27; *ibid.*, 654.

(*t*) S. 37 (7); *ibid.*, 666.

(*u*) See title COUNTY VALUATION COMMITTEE, Vol. IV., p. 241.

(*a*) R. & V.A., 1925, s. 55 (1); 14 Halsbury's Statutes 678. See title COUNTY VALUATION COMMITTEE, Vol. IV., p. 241, and cf. *Coulsdon and Purley U.D.C. v. Surrey County Council*, [1934] Ch. 694; Digest (Supp.).

(*b*) S. 38 (1); *ibid.*, 667.

(*c*) See title CENTRAL VALUATION COMMITTEE, Vol. III., p. 16.

(*d*) S. 57 (1); *ibid.*, 678.

of Health to local authorities (*e*); they constitute a valuable guide to the assessment of every class of rateable hereditament and an important factor in the attainment of uniformity of valuation.

The committee have, by means of questionnaire and conference following each valuation since the 1925 Act, inquired as to the degree of uniformity so far achieved and taken such steps as experience has suggested for overcoming difficulties in future quinquennial reviews. [375]

(*e*) Central Valuation Committee, First Eight Series of Representations. H.M. Stationery Office, 1934, Price 1s. net.

RATIFICATION OF CONTRACTS

See CONTRACTS.

RATING AND VALUATION OFFICERS

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DUTIES AND POWERS OF OFFICERS;
RATE COLLECTION;
RATES AND RATING;

RATING AND VALUATION OFFICERS, INCORPORATED ASSOCIATION OF;
VALUATIONS FOR RATING;
VALUATION LIST.

Introductory.—Rating and valuation officers are appointed and exercise their duties under the R. & V.A., 1925 (*a*), which abolished overseers and transferred their powers and duties in relation to the making, levying and collection of rates to the councils of the county boroughs and the urban and rural districts, who were constituted the rating authorities (*b*).

At the same time, in place of the poor rate, general district rate, borough rate, and others, there was substituted one consolidated rate, the "general rate" in which such rates were merged (*c*). The number of rating authorities in rural areas was reduced from 12,882 to 648,

(*a*) 14 Halsbury's Statutes 617.

(*b*) S. 1 (1), (2); 14 Halsbury's Statutes 617, 618.

(*c*) S. 2 (1); *ibid.*, 618.

and in urban areas from 2,264 to 1,119 (*d*), and new assessment committees and assessment areas were constituted (*e*).

This extensive revision of the system of rating and administration necessarily introduced many changes in the method of appointment and the duties of rating and valuation officers. [376]

Appointment.—Rating authorities, assessment committees and county valuation committees are given power to appoint rating officers, valuation officers and other officers, and to pay them such reasonable salaries as they think fit (*f*).

As a council has the power to delegate its functions as rating authority to a committee (except that such committee cannot be authorised to make a rate), the appointment of rating and valuation officers will rest with the committee to which the duties have been delegated.

For the county assessment areas it is the county valuation committee who are directly empowered to appoint, and not the county council.

In addition to the general power to appoint, any of the three authorities named may employ a competent person to give advice or assistance in the valuation of any hereditament in their area (*g*).

This special provision appears to have been inserted to make it clear that such employment may be temporary if the council think fit, or for the valuation of any special property or properties, without the payment of a salary, but on such terms as may be determined. [377]

Qualifications.—So far, no common standard of qualification or general rules of entry to the service have been established for local government officers. The Departmental Committee on the Qualifications, Recruitment, Training and Promotion of Local Government Officers, 1934, in their report to the Minister of Health make recommendations which, if adopted, will require that for entrance to the service at the junior end, there must be an examination qualification, and that professional and technical officers shall be taken from those best qualified whether from inside or outside the service. [378]

Technical Qualifications.—The Incorporated Association of Rating and Valuation Officers hold examinations on subjects pertaining to Rating and Valuation and award associateships (A.R.V.A.) and fellowships (F.R.V.A.). The examinations deal with the law, principles and practice relating to rating and valuation; accountancy; registration of electors and jurors; and the organisation and general routine of the department (see title RATING AND VALUATION OFFICERS, INCORPORATED ASSOCIATION OF). [379]

Security to be given by Officers.—By sect. 119 of the L.G.A., 1933 (*h*), a local authority, other than a parish council, must, in the case of an officer employed by them, whether under that Act or any other enactment, who by reason of his office or employment is likely to be entrusted with the custody or control of money, and may in the case of any other officer employed by them, require him to give security, or the authority

(*d*) Memorandum M. of H. R. & V. Bill, 1925.

(*e*) R. & V.A., 1925, ss. 16, 17 (2); 14 Halsbury's Statutes 640, 641.

(*f*) S. 55 (1); *ibid.*, 678.

(*g*) S. 38 (1); *ibid.*, 667.

(*h*) 26 Halsbury's Statutes 369.

may themselves take such security, for the faithful execution of his office and accounting for money or property entrusted to him, as they think sufficient.

If a person is not employed by them, but is likely to have the custody or control of money or property belonging to them, the local authority may take such security for his accounting for money or property as they think sufficient. In such case the authority are themselves to defray the cost of the security, and in any other case they may do so if they think fit. The security is in any case to be produced to the auditor at the audit of the accounts.

The accounts of rating authorities and assessments committees, and of their officers, are subject to audit by the district auditors (*i*).
[380]

Superannuation.—Officers transferred by the R. & V.A., 1925, to an assessment committee or to a rating authority, who had paid the contributions required by the Poor Law Officers' Superannuation Act, 1896 (*k*), were allowed to continue under that Act, subject to such modifications as the Minister might direct for the purposes of making it applicable to the case (*l*).

A similar provision in the L.G.A., 1929 (*m*), enabled officers transferred by that Act to any council on giving notice to continue under the benefits of the Poor Law Officers' Superannuation Act, 1896. If such notice was not given within three months after the appointed day, and the council to whom the officers were transferred had a superannuation scheme, the provisions of the Act of 1896 ceased to apply. If the council had no superannuation scheme the transferred officers remained subject to the Poor Law Officers' Superannuation Act, 1896. If the council had adopted the Local Government and other Officers' Superannuation Act, 1922, the transferred officer came under the provisions of that Act, subject to modifications stated (*n*).

Where a council to which the officer was transferred had not adopted the Act of 1922 but had some other superannuation scheme, then the council were to prepare and submit to the Minister an amending scheme for applying the superannuation scheme to those officers.

After April 1, 1939, Part I. of the L.G. Superannuation Act, 1937 (*o*), applies with certain modifications to transferred rating employees. (See paras. 6 and 7 of Pt. I of the Second Schedule to that Act (*p*)).
[381]

Dismissal or Removal from Office.—Appointments made by the rating and valuation authorities and the terms and the conditions of the appointments are at their will and pleasure (*q*). While no provision is made for security of tenure, it is in practice found that there is continuity of office where there is good behaviour and efficiency. The L.G.A., 1933 (*r*), makes particular reference to notice of termination

(*i*) R. & V.A., 1925, s. 54 (1); 14 Halsbury's Statutes 677. N.B.—In this sub-section the words "in like manner" to the end of the paragraph are repealed by the L.G.A., 1933, Schedule XI, Part IV.; 26 Halsbury's Statutes 516.

(*k*) 12 Halsbury's Statutes 949.

(*l*) R. & V.A., 1925, s. 51 (1); 14 Halsbury's Statutes 675; R. & V.A. (Superannuation of Transferred Officers) Order, 1923; S.R. & O., 1928, No. 609.

(*m*) S. 124; 10 Halsbury's Statutes 963.

(*n*) S. 124 (2); *ibid.*, 963.

(*o*) 30 Halsbury's Statutes 387.

(*p*) *Ibid.*, 422, 423.

(*q*) L.G.A., 1933, s. 107 (2); 26 Halsbury's Statutes 362.

(*r*) S. 121; *ibid.*, 370.

of appointments held during pleasure, and the retirement of officers holding such appointments, and sets out that notwithstanding any provision in the Act or *any other enactment* that a person shall hold office during the pleasure of a local authority, a provision may be included that the appointment shall not be terminated by either party without giving to the other party such reasonable notice as may be agreed; and if an officer held office under such provision at the commencement of the Act, the provision was deemed to be valid. In the same way the right or obligation of an officer appointed during pleasure of the authority to retire on attaining any specified age, or on the happening of any specified event, under any enactment or scheme relating to superannuation, is not affected by that or any other Act (s).
[382]

Rights and Duties.—In the first instance rating and valuation are the concern of the rating authority and their officers. It is they who prepare the draft valuation list, and who are responsible for the whole procedure relating to the levy and collection of rates.

Their powers and duties are embodied in many statutes beginning with the statute of Elizabeth (t) and references in any statute or document to the poor rate or other rate which is now incorporated in the general rate, or for which a special rate is now levied, are to be construed as references to the general rate and the special rate (u).

The clerk to the rating authority is usually the town clerk or clerk to the council, but under the Act he may be any officer of the authority or body authorised by them to act on their behalf either generally or in relation to any particular matter (a).

The chief financial officer of the council in borough and urban districts is responsible for the keeping of the accounts and records which are required by the Order of the Minister, or needed for the purpose of presenting a full record of the transactions of the authority under the Act (b). **[383]**

In the rural districts these duties may be assigned to the clerk or other officer as the council may deem fit (c).

The accounts, books and records required to be kept are set out in the Orders of the Minister.

The rating and valuation officers employed in the preparation of the valuation list and the making and collection of the rate may be such persons as the councils may appoint (d). The valuation officer is usually a qualified surveyor or other person of experience in valuation for rating. He prepares the draft valuation list for submission to the assessment committee for their approval, and it is on the values of the several hereditaments in the list when so approved that the rate is to be made (e).

(s) The R. & V.A., 1925, s. 48 (4); 14 Halsbury's Statutes 673, made special provision that assessment committees and rating authorities might determine the appointment of any officer transferred to them whose office they considered unnecessary; in which case the officer was entitled to compensation; *ibid.*, s. 49 (1).

(t) The Poor Relief Act, 1601; 14 Halsbury's Statutes 477.

(u) R. & V.A., 1925, s. 69 (2); 14 Halsbury's Statutes 689.

(a) S. 68 (1); *ibid.*, 687, definition of "Clerk."

(b) The Rate Accounts (Borough and Urban District Councils) Order, 1926; S.R. & O., 1926, No. 1178.

(c) The Rate Accounts (Rural District Councils) Order, 1926; S.R. & O., 1926, No. 1128.

(d) R. & V.A., 1925, s. 55 (1); 14 Halsbury's Statutes 678.

(e) S. 20 (1); *ibid.*, 645.

The valuation officer deals with all objections to the draft valuation list, and proposals for the amendment of the valuation list (*f*), and advises the rating authority upon them. He also usually represents the rating authority before the assessment committee on the hearing of objections or proposals. The assessment committee may themselves employ a valuer and he may be called as a witness, but neither he nor any other party to the objection or proposal, nor a witness in the case, may be present when the committee are considering their decision (*g*). [384]

In order to assist them in the work of valuation, the valuers of rating authorities, assessment committees and county valuation committees are given power to enter any hereditament in their area; and any person who wilfully delays or obstructs them in the performance of their duties is liable to a penalty (*h*).

A valuation officer acting on behalf of either the rating authority or the assessment committee may call for returns from occupiers, owners or lessees of hereditaments, of particulars required for any of the purposes of the Act, under penalty if there is failure to comply (*i*).

The rating officer has certain prescribed duties as to the keeping of accounts which are specified in the orders of the Minister (*k*).

There are no provisions as to the method to be adopted by the officer who collects the rate. He is left in the main to follow the procedure that was in use for the collection of the poor rate (*l*). [385]

London.—The R. & V.A., 1925, does not in general apply to London. Metropolitan borough councils (which are the rating authorities as defined in the R. & V. (Apportionment) Act, 1928, as respects any parish in the metropolitan boroughs) have, by virtue of sect. 62 of the Metropolis Management Act, 1855 (*m*), power to employ "clerks, treasurers and surveyors, and such other officers and servants as may be necessary." By sect. 30 (1) of the London Government Act, 1899 (*n*), assistant overseers, rate collectors and other officers employed in the duties of overseers were transferred to the borough councils, and offices may be abolished by the borough councils subject to the payment of compensation to transferred officers. See also sect. 11 of the same Act (provisions as to overseers and collection of rates) which empowers the borough councils to appoint officers and to defray expenses of and incidental to the performance of duties of overseers.

Sect. 61 of the Valuation (Metropolis) Act, 1869 (*o*), as amended by sect. 18 and the Tenth Schedule to the L.G.A., 1929 (*o*), authorises the metropolitan borough councils or the City corporation on the application of the assessment committee to appoint a paid valuer.

Sect. 38 of the R. & V.A., 1925 (*p*), as applied to London by

(*f*) Made under ss. 26 (1), 37 (1); 14 Halsbury's Statutes 653, 664.

(*g*) *Ibid.*, Sched. IV., Part III (3), (4), and s. 38 (1); 14 Halsbury's Statutes 697, 667; *R. v. N.E. Surrey Assessment Committee*, [1933] 1 K. B. 776; Digest (Supp.).

(*h*) S. 38 (1) (2); 14 Halsbury's Statutes 667.

(*i*) SS. 40, 41, 42; *ibid.*, 668-670.

(*k*) The Rate Accounts (Borough and Urban District Councils) and the Rate Accounts (Rural District Councils) Orders, *ante*.

(*l*) See title RATE COLLECTION.

(*m*) 11 Halsbury's Statutes 893.

(*n*) *Ibid.*, 1239.

(*o*) 14 Halsbury's Statutes 579; 10 Halsbury's Statutes 894, 995.

(*p*) *Ibid.*, 667.

sect. 7 (1) (a) and Second Schedule of the R. & V. (Apportionment) Act, 1928 (*q*), empowers any rating authority or assessment committee to employ a competent person to give advice or assistance in connection with the valuation of any hereditament in their area. This section would appear to supersede sect. 61 of the Valuation (Metropolis) Act, 1869.

See also title LONDON RATING. [386]

(*q*) 14 Halsbury's Statutes 723, 728.

RATING AND VALUATION OFFICERS, INCORPORATED ASSOCIATION OF

The Association (*a*) was founded in 1882, incorporated in 1911, and reincorporated in 1927 consequent upon the passing of the R. & V.A., 1925. By special licence of the Board of Trade it is permitted to dispense with the word "limited" as part of its name. Its chief objects are (1) to improve and develop the technical and general knowledge of persons engaged or about to be engaged in the profession or occupation of rating and valuation; (2) to promote the study of the following branches of law, namely: the law, principles and practice relating to rating, valuation and assessment of property; landlord and tenant; registration of electors; juries (common and special) and the preparation of jury lists; local government; and such other branches of law and practice, including the levying, collection and recovery of rates and the keeping of accounts and audit thereof, as may be relevant to, or conducive to the efficient discharge of the duties of rating and valuation officers and with a similar object to promote the study of economics and public and local administration and of other branches of knowledge; (3) to establish and maintain a library; (4) to provide for the delivery of lectures, classes or meetings for the study or discussion of any subjects which may directly or indirectly advance the objects of the Association; to employ and pay professors, readers or teachers and examiners; to hold examinations or other tests of knowledge and efficiency and to award prizes, certificates and distinctions for efficiency in specified subjects; (5) to establish scholarships and exhibitions, and make grants to persons pursuing a course of study whether privately or at any educational institution, including any university; (6) to publish a journal or other publication, or any other form of literature with a view to forwarding the objects of the Association; (7) to advise members of the Association and others connected with rating and

(*a*) The Registered Office of the Association is 26, Abingdon Street, Westminster, London, S.W.1.

valuation on any matters with respect to which they may require information or advice; and (8) to give assistance in connection with the consideration by the Legislature or any public department or local authority or any other association or person of any matters which are of interest to the Association or its members. [387]

The association consists of four classes of members, viz: fellows, associates, student members and honorary members.

To be elected a fellow or associate a person must at the time of his application be a rating and valuation officer (as defined by the articles) and have passed such an examination and have such professional qualifications as shall from time to time be prescribed by the council. A fellow is entitled, during membership, to use after his name the letters F.R.V.A. An associate is entitled, during membership, to use after his name the letters A.R.V.A. A fellow or associate, upon ceasing to be a rating and valuation officer, may make application to be elected an honorary member.

To be elected a student member a person at the time of his application must have passed a preliminary examination of an educational character prescribed by the council, or must have been exempted by the council from passing such examination. A student member is entitled to attend meetings and receive the publications of the Association. [388]

The business of the Association is managed by a council elected by the members.

A quarterly journal is issued to members.

The greater part of the work of the council and the standing committees is concerned with the consideration of technical questions, lectures, publications and examinations.

The examinations which have been held since 1911 are divided into preliminary, intermediate and final grades. The final grade consists of parts I and II which can be taken separately. Candidates for the preliminary examination must be at least 16 years of age; for the intermediate examination must be at least 18 years of age and have passed the preliminary examination, or have been exempted therefrom; and for the final examination must be not less than 21 years of age, have had at least three years' practical experience in a rating or other similar office of a local authority, and have passed the intermediate examination. [389]

RATING APPEALS

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See also titles :

ASSESSMENT COMMITTEES ;
COUNTY VALUATION COMMITTEE ;
DIFFERENTIAL RATES ;

LONDON, RATING IN ;
VALUATION LIST.

Appeal against a Rate.—The right of appeal against a rate as distinct from an appeal relating to a valuation list (see *post*), is considerably limited by the R. & V. A., 1925. Appeal to quarter sessions may not now be made in respect of any matter on which relief can be obtained by means of an objection to the draft valuation list or to any alteration, insertion or correction made in that list, or by means of a proposal for the amendment of the current valuation list (*a*).

The matters in respect of which relief can be obtained by these means are those set out in Part II. of the Act. See titles ASSESSMENT COMMITTEES and VALUATION LIST. [890]

The remedy for an assessment which is incorrect or unfair must be found therefore, not by appeal against the rate which is made on the basis of such assessment, but by amendment of the valuation list. The amendment of the rate will follow, as the values in the valuation list are conclusive for the purposes of the rates (*b*), and the rating authority must give effect to any corrections in the valuation list made by the assessment committee (*c*). Appeals against a rate are thus restricted to appeals on the ground of some illegality in the rate itself ; and in considering whether appeal should be made, it is essential first to ascertain whether a remedy could have been found, or may still be

(*a*) R. & V. A., 1925, s. 14 ; 14 Halsbury's Statutes 638.

(*b*) *Ibid.*, s. 20 (1) ; *ibid.*, 645.

(*c*) *Ibid.*, s. 28 (5), and see *R. v. Stepney Corp., Ex parte Walker (John) & Sons, Ltd.* (1932), 102 L. J. (K. B.) 113.

found, by way of amendment of the valuation list, or by an alteration which the rating authority itself can and should make (*d*).

If the effect of an alteration or insertion of an assessment in the rate is to make the values in the rate differ from those in the valuation list, the alteration or insertion becomes operative only when it has been approved by the assessment committee on an objection or proposal, and this being so, any amendment can only apply to the year current when the objection or proposal was made, and not to a preceding rate (*e*).

If there is any departure from the procedure set down in the Acts, there may be ground of appeal, as also if the rate is insufficient or excessive (*f*). [391]

The rate must be made by the council, who have no power to delegate this function (*g*). A general rate must be at a uniform amount per pound on the rateable value of each hereditament in the rating area (*h*), but additional items to a general rate may be levied in part of the rating area (*i*), and separate special rates in rural districts are levied in respect of certain expenses for which parts of the rating area are required to be separately rated (*k*). The annual value of premises in the rate book must be the same as the values appearing in the valuation list in force when the rate is made (*n*). The rate may be for a period fixed by the rating authority, to terminate on a date to be specified in the rate, but the last rate made in any financial year must terminate on the last day of that year (*o*). Notice of the making of the rate is to be given, in the manner prescribed, within seven days thereafter and the rate is not valid unless such notice is given (*p*).

It would appear, therefore, that any rate which did not comply with these or any other requirements would be open to appeal. A rate also may only be levied for specified purposes, and if it were made for any other purpose, appeal would lie (*q*). For example, it is stated in the Act that "rate" does not include a rate assessed under any commission of sewers in respect of drainage, wall, embankment, or other work for the benefit of land; and tithe rate, Church rate, or any other of a similar character; any rate which is leviable by the conservators of a common; any water rate; or any garden rate or square rate, if levied by any person other than the rating authority (*r*). [392]

In other instances it would appear that the remedy of a person aggrieved must be sought by way of appeal against the rate, as in the following:

If property in rateable occupation included in the valuation list is omitted from the rate. In such case the rate does not comply with the

(*d*) R. & V.A., 1925, s. 5 (1); 14 Halsbury's Statutes 625.

(*e*) Cf. *Foleshill R.D.C. v. Perkins* (1931), 14 Rat. Inc. Tax Rep. 207.

(*f*) R. & V.A., 1925, s. 12; 14 Halsbury's Statutes 636.

(*g*) L.G.A., 1933, s. 85; 26 Halsbury's Statutes 352.

(*h*) R. & V.A., 1925, s. 2 (3).

(*i*) *Ibid.*, s. 20 (1).

(*k*) *Ibid.*, s. 4 (2).

(*n*) *Ibid.*, s. 20 (1).

(*o*) *Ibid.*, s. 4 (2).

(*p*) *Ibid.*, s. 6; 14 Halsbury's Statutes 626.

(*q*) Cf. *Evans v. Battersea Borough Council* (1908), 72 J. P. 189; 38 Digest 635, 1535.

(*r*) R. & V.A., 1925, s. 68, definition "Rate"; cf. *Evans v. Battersea Borough Council* (1908), 1 Konst. Rat. App. 82; 38 Digest 635, 1535.

Act, which requires that the general rate shall be on the rateable value of each hereditament in the rating area, and every rateable hereditament must be included (s).

If anyone is aggrieved by incorrectness or unfairness in the imposition of a differential rate. The Act of 1925 does not specifically sanction the levy of differential rates, but their validity is implied (t).

For the same reason, if there is failure to give effect to any exemption or privilege in respect of rating conferred by any local Act or Order continued under a scheme approved by the Minister (u) provided that the exemption or privilege does not affect the amount of the assessment.

Then there are certain properties, viz. tithe, land covered with water, land used as a canal or a towing path for a canal, and any canal used as a railway constructed under any Act of Parliament for public conveyance, which are to be charged to special rates in a rural district on one-fourth only of the rateable value (a). A claim to such partial exemption would be apparently by way of appeal against the rate. [393]

Non-occupation—a Ground of Appeal.—That a person is not in occupation of premises or other hereditament for which he is rated, is a ground of appeal, either against the rate or the valuation list as the case may be. If his name appears incorrectly as occupier in the valuation list, he should seek amendment of the list (b), and the confirmation or the amendment of the rate will follow (c). But if his name is incorrectly entered as occupier in the rate and is not in the valuation list, he may seek his remedy against the rate by objection at the application before the justices for a distress warrant (d). If appeal were made to quarter sessions, it might still be objected that the remedy should have been sought by amendment of the valuation list, as the omission of any matter from the list, e.g. the name of the true occupier, is ground of objection (e).

In the same way if there is not exclusive occupation, that is where there is only a subordinate occupation subject at all times to the control and regulation of another, there is *prima facie* ground of appeal. [394]

What constitutes rateable occupation is dealt with elsewhere (f). It has been the subject of innumerable appeals, and can only be decided on the facts in each case. Thus it is maintained that "Land may be occupied for the purpose of, and in connection with, the enjoyment of an easement in such a manner as to make the person so occupying liable to be rated;" but "Where a person already in possession has given to

(s) R. & V.A., 1925, s. 2 (3), (9), and s. 20 (1); and see Poor Rate Act, 1801, s. 6; 14 Halsbury's Statutes 493.

(t) R. & V.A., 1925, s. 64; *ibid.*, 683, and see title DIFFERENTIAL RATES.

(u) *Ibid.*

(a) *Ibid.*, s. 3 (2).

(b) *Ibid.*, s. 14.

(c) *Ibid.*, s. 28 (5).

(d) Cf. *Mikward v. Caffin* (1779), 2 Wm. Bl. 1330; 18 Digest 408, 1484; *Bristol Poor (Governors of) v. Wait* (1834), 1 Ad. & El. 264; 18 Digest 404, 1438; *Shillito v. Hinchliffe*, [1922] 2 K. B. 236; 18 Digest 401, 1414; *L.C.C. v. Hackney Borough Council*, [1928] 2 K. B. 588; Digest (Supp.).

(e) R. & V.A., 1925, ss. 26 (1), 37 (1); 14 Halsbury's Statutes 653, 664.

(f) See title ASSESSMENT FOR RATES, Vol. I., p. 458.

another possession of a part of his premises, if that possession be not exclusive, he does not cease to be liable to the rate, nor does the other become so" (g).

If in any case it is contended that the name of the true occupier is correctly entered in the valuation list, and that the appellant whose name appears in the rate book is not the rateable occupier, procedure would appear to be by way of appeal against the rate, as it cannot be said that the appellant is aggrieved by any matter in the list.

No particulars with respect to agricultural land or buildings are included in the valuation list (h). Other properties exempt are to be included in the list, but the value is not to be entered (i). Thus no values should appear in the valuation list in respect of any churches, chapels or schools or any other of the classes of property which are exempt by statute (j). Hereditaments occupied by or on behalf of the Crown for public purposes in respect of which contributions are made by the Crown, are to be entered in the valuation list at the value fixed by the Treasury Valuer, and as representing rateable values upon which the contributions are computed (k), but such entry does not affect any question as to contributions to be made by the Crown.

If therefore rates are made on such properties, where the value does not appear in the list, procedure for relief will be against the rate, as it is the rate and not the list by which the person rated is aggrieved. If a person who is liable to repair some highway, claims exemption from any part of the rate under sect. 33 of the Highway Act, 1835 (l), his appeal will be against the rate (m). [395]

Generally, as to exemptions, it may be said that if the exemption or partial exemption is one to which effect is to be given by means of a reduction or allowance from the rate charged, and not by an alteration of value in the valuation list, the remedy for one aggrieved will be by appeal against the rate.

Disputes as to the liability of an owner to be rated compulsorily instead of the occupier under sect. 11 of the R. & V.A., 1925 (n), appear to concern only the rate, as the rating of owners instead of occupiers does not come within the scope of the valuation list. [396]

Appeals against a Rate : Procedure.—Right of appeal to quarter sessions against a rate is given by the Statute of Elizabeth (o) to any person who finds himself "grieved with any sess or tax" or by any act of the overseers, or by the justices of the peace. The Poor Relief Act, 1743 (p), limited the right of appeal to the *next* general or quarter sessions, and gave power to the sessions to amend the rate upon appeal

(g) *Holywell Union and Halkyn Parish v. Halkyn Drainage Co.*, [1895] A. C. 117; 59 J. P. 566; 38 Digest 424, 7; Lord HERSCHELL, L.C., at pp. 120, 125, 126; and see *Smith v. Lambeth Assessment Committee* (1882), 10 Q. B. D. 327; 47 J. P. 244; 38 Digest 446, 157.

(h) L.G.A., 1929, s. 67 (2); 10 Halsbury's Statutes 928.

(i) R. & V.A., 1925, s. 21 (1); 14 Halsbury's Statutes 645; R. & V. Acts (Form of Valuation List) Rules, 1932; S.R. & O., 1932, No. 395; r. 5, columns 7, 8, 9 and 10.

(j) See title ASSESSMENT FOR RATES, Vol. I., p. 458.

(k) R. & V.A., 1925, s. 64 (3) (b).

(l) 9 Halsbury's Statutes 64.

(m) R. & V.A., 1925, s. 64 (1); 14 Halsbury's Statutes 683, which preserves the right to exemption under the Highway Act.

(n) 14 Halsbury's Statutes 632.

(o) Poor Relief Act, 1601, s. 5; 14 Halsbury's Statutes 479.

(p) S. 4; *ibid.*, 486.

in such manner only as necessary for giving the relief sought without altering the rates or assessments of other persons, and without quashing the rate (*g*). This was extended by the Poor Rate Act, 1801 (*r*), which authorises and requires the court, in granting relief, to amend the rate or assessment, either by inserting or striking out the name of any person, or by altering the sum charged, or in any other manner which the court thinks necessary for giving relief, without quashing or wholly setting aside the rate or assessment, so that under this section the rates or assessments of persons other than the appellants may be altered.

What is meant by the "next quarter sessions" is not defined, but it has been construed as meaning "the next practicable sessions at which an effectual appeal could be lodged" (*s*). Following on the case cited, it was held that the parties must have a reasonable time for making the necessary inquiries and considering whether to appeal or not (*t*). But how long is a "reasonable time" is a question of fact, depending on the circumstances of each case.

It is not left to the justices alone to decide "what are the next practicable sessions." The High Court has held that it is competent for them to review the decision of quarter sessions as to what was a "reasonable time" (*u*).

The appellant may, however, protect himself by entering his appeal at the first sessions, and then by sect. 4 of the Poor Relief Act, 1743, "if it shall appear to the justices that reasonable notice was not given, they *shall* adjourn the said appeal to the next sessions, and then and there finally hear and determine the same" (*a*). [397]

Who may Appeal.—Any person who is aggrieved by any rate, or has any material objection to any person being put in or left out of such rate, or to the sum charged on any person, or is aggrieved by any neglect, act or thing done or omitted by the overseers of the poor, or by any of his Majesty's justices of the peace, may appeal to the next quarter sessions (*b*). This provision relates to the poor rate, but is applicable to the general rate and to special rates made under the Act of 1925 (*c*), subject to the limitations in sect. 14 of that Act.

It is obvious that such wide terms will include not only the occupier of a particular hereditament, but one who may be aggrieved by the under-assessment or omission from the rate of another.

Owners who are compulsorily rated under sect. 11 (1) of the Act of 1925, and owners who enter into agreement with the rating authority to pay the rates on their property (*d*) are to be treated in relation to any right of appeal to quarter sessions against the rate as standing

(*g*) Poor Relief Act, 1743, s. 6.

(*r*) S. 1; 14 Halsbury's Statutes 491.

(*s*) *R. v. Sussex JJ.* (1812), 15 East, 206; 38 Digest 613, 1381.

(*t*) *R. v. Essex JJ.* (1817), 1 B. & Ald. 210; *R. v. Surrey JJ.* (1880), 6 Q. B. D. 100; 38 Digest 613, 1386.

(*u*) *Liverpool Gas Co. v. Everton* (1871), L. R. 6 C. P. 414; 38 Digest 613, 1385; *R. v. Carmarthen JJ.* (1893), Ryde, Rat. App. (1891-93), 334, C. A.; 38 Digest 614, 1388; and see *R. v. Wiltshire JJ.* (1772), 2 Const. 925.

(*a*) Cf. *Denaby Overseers v. Denaby and Cadeby Main Collieries, Ltd.*, [1909] A. C. 247; 38 Digest 614, 1391; and see *Redheugh Colliery, Ltd. v. Gateshead Assessment Committee*, [1924] 1 K. B. 369, C. A.; 33 Digest 399, 1106, as to further adjournment.

(*b*) The Poor Relief Act, 1743, s. 4; 14 Halsbury's Statutes 486.

(*c*) R. & V.A., 1925, ss. 2 (3), 3 (2); *ibid.*, 619, 622.

(*d*) *Ibid.*, s. 11 (2); *ibid.*, 634.

in the same position as the occupier, without prejudice to the rights of the occupier (*e*). The right of such owners to appeal would appear to be inherent in the terms of the Act of 1743 (*supra*).

It would seem that owners of property let for a term not exceeding three months are among those who may claim to be aggrieved. The tenants of such properties are entitled to deduct the rates paid by them from the rent, and such payment is a valid discharge of the rent to the extent of the rate so paid (*f*). The amount of rate so paid plainly concerns the owner. [398]

Sessions to which Appeal Lies.—Appeal may be made to the next general or quarter sessions for the county, riding, division, corporation or franchise where such parish, township or place lies (*g*). Special provision is made that where corporations or franchises have not more than six justices of the peace, and have not jurisdiction or authority over two or more whole parishes or wards, appeal may be made to the next general or quarter sessions for the county, riding or division in which the corporation or franchise is situate. This does not, however, apply to a city or county borough (*h*).

The term “next general or quarter sessions” appears to be of importance where notice of appeal is concerned, but it has been held that the words “general” and “quarter” here mean the same thing, and that “general” is equivalent to “quarter.” In places, therefore, where both general and quarter sessions are held, appeal is to quarter sessions, and notice need not be given to general sessions, although that may appear to be the next practical one (*i*). [399]

Special Sessions.—Appeal no longer lies to special sessions. Formerly, appeal could be made to the justices in special sessions on a question of the value of a hereditament though not on a question of liability to assessment or on any other point of law; an appeal from the decision was to quarter sessions (*k*). The Act under which the power was given is now repealed (*l*), and any person aggrieved by an assessment must seek his remedy by amendment of the valuation list (*m*).

Quarter sessions, as the name implies, are to be held at least once in each quarter of the year. The general quarter sessions for a county must be held at such times within the period of twenty-one days immediately preceding or following March 25, June 24, September 29 and December 25 as the court may from time to time fix. “County” here includes a riding, division or part of a county for which a separate court is held but does not include the County of London or a county of a city or town (*n*).

In places to which the above does not apply quarter sessions must

(*e*) R. & V.A., 1925, s. 11 (8).

(*f*) Poor Rate Assessment and Collection Act, 1869, s. 1; 14 Halsbury's Statutes 546; R. & V.A., 1925, s. 11 (7).

(*g*) The Poor Relief Act, 1743, s. 4; *ibid.*, 486.

(*h*) Poor Relief Act, 1601, s. 8; Poor Relief Act, 1743, s. 5; 14 Halsbury's Statutes 479, 488, amended by the Poor Law (Appeals) Act, 1820; 14 Halsbury's Statutes 499.

(*i*) *R. v. London JJ.* (1812), 15 East, 632; 38 Digest 643, 1613; *R. v. Middlesex JJ.* (1843), 4 Q. B. 807; 33 Digest 875, 835.

(*k*) Parochial Assessments Act, 1836, s. 6; 14 Halsbury's Statutes 501.

(*l*) R. & V.A., 1925, Sched. VIII.; *ibid.*, 705.

(*m*) *Ibid.*, s. 14; *ibid.*, 638.

(*n*) Criminal Justice Act, 1925, s. 22; 11 Halsbury's Statutes 409.

be held once in each quarter of the year, on dates to be fixed by the recorder or the court (o).

The L.G.A., 1933, provides for the modification in some cases of the areas and functions of quarter sessions. Where, under the Act, a provisional order uniting boroughs is confirmed, his Majesty may grant a court of quarter sessions to the combined borough in like manner as to any other borough (p) and, where there is an alteration of area, a scheme or order made under the Act may deal with the functions or area of jurisdiction of quarter sessions within the area affected by the scheme or order and with the costs and expenses (q). [400]

Notice of Appeal.—Fourteen clear days' notice of appeal must be given, and this is sufficient notice, any Act or Acts, or any rule or practice of any court or courts to the contrary notwithstanding. The notice must be in writing, signed by the appellant or his attorney on his behalf, and must specify the grounds of appeal (r). The R. & V.A. (Assessment Appeal) Rules, 1927 (s), apply only to appeals against the valuation list, and are not necessarily applicable to appeals against a rate.

By the Statute of Elizabeth, notice was to be given to the overseers, and by virtue of sect. 2 (3) of the R. & V.A., 1925 . . . "all enactments relating to the poor rate . . . including . . . enactments relating to appeals against a poor rate, shall . . . apply to the general rate" (t). The safe course is to presume that it is intended that notice should now be served on their successors, the rating authorities.

The Overseers Order, 1927 (u), provides that where any enactment required that a document is to be served on the overseers, service in an urban parish is now to be on the clerk to the rating authority; in a rural parish under a parish council on the chairman of the parish council; in a rural parish not under a parish council on the chairman of the parish meeting. In order to avoid any risk of technical objection to the method of service, it is advisable that notice of appeal should always be served upon the rating authority in addition to any other service prescribed in the order. [401]

If appeal is made because some other person is wrongly rated or omitted from the rate, or is rated at a greater or less sum than that at which he ought to be rated, or for any other cause that may require an alteration of the rate, then in addition to the notice to the rating authority and any other notice that may be given, notice must also be given to the person or persons interested or concerned (a).

If notice of appeal is given, though such notice may not be the reasonable notice prescribed, or if no notice to the next practicable sessions has been given, it has been held that sessions are bound to accept and adjourn the appeal (b). [402]

(o) Municipal Corpn. Act, 1882, s. 165; 10 Halsbury's Statutes 630.

(p) S. 140 (5); 26 Halsbury's Statutes 380.

(q) *Ibid.*, s. 148 (1) (d) and (3).

(r) Quarter Sessions Act, 1840, s. 1; 11 Halsbury's Statutes 293.

(s) S.R. & O., 1927, No. 416; 14 Halsbury's Statutes 798.

(t) R. & V.A., 1925, s. 2 (3); *ibid.*, 619.

(u) S.R. & O., 1927, No. 55.

(a) The Poor Rate Act, 1801, s. 6; 14 Halsbury's Statutes 493.

(b) *R. v. Gloucestershire JJ.* (1779), 1 Doug. (K.B.) 191; *R. v. Staffordshire JJ.* (1806), 7 East, 549; *R. v. London JJ.* (1846), 9 Q.B. 41; 87 Digest 342, 1463; *Denaby Overseers v. Denaby and Cadeby Main Collieries*, [1909] A.C. 247; 38 Digest 614, 1391; see Poor Relief Act, 1743, s. 4; 14 Halsbury's Statutes 486.

Contents of Notice of Appeal against Rate.—The grounds of appeal must be stated in every notice of appeal. This appears to be imperative as the Act (c) provides that the appellant at the trial of the appeal cannot go into or give evidence of any other ground of appeal besides those set forth in the notice. The decision in *Gateshead Assessment Committee v. Redheugh Colliery, Ltd.* (d), does not appear to be inconsistent with this, as in that case, although the point in dispute had not been raised before the Assessment Committee, it was held that it was covered by the terms of the notice of objection.

The grounds of appeal may be amended by order of the quarter sessions (e), whose decision to allow or refuse amendment is final.

It has been held that persons having a joint grievance may combine in giving one notice of appeal (f), and also that one appeal by the same appellant may be made against two or more rates (g). [403]

Payment of Rate Under Appeal.—Notice of appeal does not prevent the recovery of the rate, but until the appeal is heard and determined a greater sum may not be enforced than the sum at which the occupier of the premises was rated in the last effective rate (h). If the rate is quashed, the sums charged may still be recovered, and the amounts paid will be taken as payments on account of the next effective rate (i). But quarter sessions may order that the rate shall not be paid, and that any proceedings commenced shall be stayed (k). If on appeal an assessment is struck out or reduced, quarter sessions must order that any sum paid in excess shall be repaid (l), or the rating authority may give credit for the overpayment without such order (m). [404]

Powers of Quarter Sessions.—It is the practice of each quarter sessions to make rules regulating the proceedings of the court (n), and where appeal is intended it is advisable to ascertain from the clerk to the court what standing orders or rules of the particular court are to be complied with. The rules must not be oppressive on an appellant so as to prevent the hearing of his appeal, as, for example, by some illegal practice (o), or under which they refuse to hear an appeal which the appellant has the right to bring before them (p).

There has been no fixed rule in the past as to the right of the appellant to begin, and the practice has varied at different courts. Now

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- (c) Quarter Sessions Act, 1849, s. 1; 11 Halsbury's Statutes 293; and see (d) [1925] A. C. 309; 38 Digest 604, 1309.
 (e) Quarter Sessions Act, 1849, ss. 2, 9; 11 Halsbury's Statutes 293, 295. Poor Rate Act, 1801, s. 4; Halsbury's Statutes 492.
 (f) *R. v. Sussex J.J.* (1812), 15 East, 206; 38 Digest 613, 1381; and see *Glamorgan County Valuation Committee v. Barry Area A.C.*, [1931] 1 K. B. 157; Digest (Supp.).
 (g) *R. v. Suffolk J.J.* (1818), 1 B. & Ald. 640; 38 Digest 605, 1321.
 (h) Poor Rate Act, 1801, s. 2; 14 Halsbury's Statutes 491.
 (i) *Ibid.*, s. 1.
 (k) *Ibid.*, s. 3.
 (l) *Ibid.*, s. 8; see *R. & V.A.*, 1925, s. 36; 14 Halsbury's Statutes 663.
 (m) Cf. *R. v. Parker* (1857), 7 E. & B. 155; 38 Digest 607, 1341; *R. v. Kingston J.J.* (1858), E. B. & E. 259; 38 Digest 611, 1368.
 (n) *R. v. Pawlett* (1873), L. R. 8 Q. B. 491; 33 Digest 393, 1039.
 (o) *R. v. West Riding J.J.* (1833), 5 B. & Ad. 667; 33 Digest 400, 1107; *R. v. Wiltshire J.J.* (1808), 10 East, 404; 33 Digest 392, 1026.
 (p) *R. v. Norfolk J.J.* (1834), 5 B. & Ad. 990; 33 Digest 393, 1036; *R. v. Bird, Ex parte Needes*, [1898] 2 Q. B. 340; 30 Digest 47, 368; *R. v. Pawlett, supra*; *R. v. Derbyshire J.J.* (1852), 22 L. J. (M. C.) 31; 33 Digest 374, 829.

under the R. & V.A., 1925, the appellant must begin (*g*), and although the rule applies to appeal against an assessment, it may be that a similar procedure will be adopted on appeal against a rate.

Quarter sessions may amend or quash a rate as they find necessary or advisable, but if the appeal be from rates and assessments, the justices are to amend them only so far as shall be necessary for giving such relief on the appeal for which there is just cause, without altering the rates or assessments with respect to other persons. But if on an appeal from the whole rate it is found necessary, they may quash or set the rate aside (*r*).

The Poor Rate Act, 1801 (*s*), authorises and requires the justices to enter or strike out the name of any person, or to alter the sum charged, or to amend in any other manner necessary for giving relief, without quashing or wholly setting aside the rate or assessment. But they may quash the rate if they are of opinion that it is necessary (*t*).

The rate book is to be produced at sessions on the hearing of an appeal (*u*). [405]

Appeals Relating to Valuation Lists.—Appeal to quarter sessions under this head is against the decision of the assessment committee, and any person who appeared before the assessment committee on the consideration of an objection to the draft valuation list may, if he is aggrieved by the decision of the committee, appeal against the decision to the court of quarter sessions for the county or place where the hereditament to which the objection related is situate (*a*). There is the same right of appeal where objection is made to any alteration made by the assessment committee in revising the draft list (*b*).

A person making a proposal for the amendment of the valuation list, or a person objecting to it, or the rating authority who is aggrieved by the committee's decision, may appeal against it as if it were a decision upon an objection to the draft list, and all the provisions of the Act with respect to appeals against such a decision apply accordingly (*c*). It is not clear from this whether all the conditions relating to an appeal on an objection are binding on appeal relating to a proposal, but in view of the express provision in sect. 31 (1) limiting the right of appeal to persons who appeared before the assessment committee, it seems likely that this limitation applies where appeal is made against the decision on a proposal. [406]

Appeal is open to any person (including the county valuation committee and any local authority) aggrieved by the incorrectness or unfairness of any matter in the draft list or the valuation list, or by the insertion or omission of any matter, or by the valuation as a single hereditament of a building or a portion of a building occupied in parts or otherwise with respect to those lists (*d*), provided that objection has been made to the draft list, or proposal made for the amendment of

(*g*) R. & V.A. (Assessment Appeals) Rules, 1927, r. 9; S.R. & O., 1927, No. 416; 14 Halsbury's Statutes 801.

(*r*) Poor Relief Act, 1743, s. 6; 14 Halsbury's Statutes 488.

(*s*) 14 Halsbury's Statutes 490.

(*t*) S. 1; 14 Halsbury's Statutes 491.

(*u*) Poor Relief Act, 1743, s. 13; R. & V.A., 1925, s. 62 (3); *ibid.*, 489, 682.

(*a*) R. & V.A., 1925, s. 31; 14 Halsbury's Statutes 657; *ibid.*, s. 26 (1).

(*b*) *Ibid.*, ss. 27 (2), 31.

(*c*) *Ibid.*, s. 37 (8).

(*d*) *Ibid.*, s. 26 (1); 14 Halsbury's Statutes 653; S. 37 (1).

the valuation list, and the objection or proposal has been considered and decided by the assessment committee (*e*).

While the Act gives right of appeal to those persons only who appeared before the assessment committee, the right of appeal is not lost although they do not submit evidence (*f*), and the objector may be represented by counsel or solicitor, or by a surveyor or other agent (*g*).

The position of the appellant is safeguarded in one particular respect by a special provision in the Act, that if no other person appears as respondent to the appeal, the assessment committee shall be deemed to be a respondent, whether they appear on the hearing or not (*h*).
[407]

Tribunals of Appeal.—Appeal in the first instance against the decision of an assessment committee is to the quarter sessions for the county or place where the hereditament in question is situate (*i*).

Appeals relating to the valuation list are to be distinguished from appeals against a rate, in which the procedure is different (*k*).

If the hereditament in question is situate in a borough having a separate court of quarter sessions, appeal will be to that court, where the recorder is the sole judge (*l*).

In the county, appeal is to a committee of the justices which is deemed to be a standing committee of quarter sessions, to whom the powers and duties of quarter sessions with respect to appeals are delegated. The committee is appointed by quarter sessions, and, subject to the provisions of the Act and any rules made under it, has the same powers as regards costs and other matters under the Quarter Sessions Act, 1849 (*m*), or otherwise, as if they were the court of quarter sessions (*n*). The method of appointment of the committee and the procedure are determined by quarter sessions, but the chairman is to be appointed annually, and quarter sessions in making the appointment are to have regard to judicial or other legal experience. Not less than five or more than seven members are to take part in the determination of an appeal, and the chairman or acting chairman has a second or casting vote (*o*).

Where quarter sessions have customarily been held separately for part of a county (as *e.g.* in Lancashire, and in Yorkshire where each Riding has a separate commission), any part of the county where quarter sessions were separately held may for the purposes of appeals be constituted, by order of a Secretary of State, a separate county with a separate quarter sessions (*p*).

(*e*) *R. & V.A.*, 1925, s. 27; Sched. IV., Part III.; and s. 37 (7); 14 Halsbury's Statutes 654, 666, 697.

(*f*) *Cf. R. v. Essex J.J.* (1883), 11 Q. B. D. 704; 33 Digest 442, 1523.

(*g*) *R. v. St. Mary Abbots, Kensington Assessment Committee*, [1891] 1 Q. B. 378; 38 Digest 582, 1159; and *R. v. North Worcestershire Assessment Committee*, [1929] 2 K. B. 397; Digest (Supp.). See title ASSESSMENT COMMITTEES, "Persons entitled to appeal."

(*h*) *R. & V.A.*, 1925, s. 32 (3); 14 Halsbury's Statutes 660.

(*i*) *Ibid.*, s. 31 (1).

(*k*) See *ante*, "Appeal against a Rate," and *R. & V.A.*, 1925, s. 14.

(*l*) *Ibid.*, s. 32 (7).

(*m*) 11 Halsbury's Statutes 293.

(*n*) *R. & V.A.*, 1925, s. 32 (1), (2), (3); 14 Halsbury's Statutes 660.

(*o*) *Ibid.*, s. 32 (4), (5).

(*p*) *Ibid.*, s. 32 (6); 14 Halsbury's Statutes 661; and see L.G.A., 1933, ss. 140 (5), 148 (1) (d), (3); 26 Halsbury's Statutes 380, 386, 387.

At the hearing of an appeal before a committee of quarter sessions in the county, if the rateable value of the hereditament under appeal does not exceed one hundred pounds, the appellant may appear by solicitor instead of in person or by counsel (*q*).

This rule does not apply to borough quarter sessions, where procedure is determined by the recorder. [408]

Notice of Appeal.—Before appeal is made due notice must be given. If appeal is against a decision of the assessment committee on an objection to the draft list, and the decision of the committee is arrived at before the draft list is finally approved, notice must be given before the expiration of twenty-one days after the valuation list is finally approved (*r*).

There appears to be some weakness in the procedure here. Notice of the approval of the list is to be sent to the clerk of the peace for quarter sessions (*s*), but apart from this there is no provision requiring the publication of notice that the list has been finally approved and it rests with an intending appellant to ascertain the date by inquiry of the assessment committee, or in such way as he can. It is, however, the duty of the committee to give him notice of their decision, and in the notice to state the time within which appeal may be made. Even in this case it may be found that the notice is no more specific than the general terms of the Act. It may be noted, though, that the assessment committee are required, as soon as the draft list is approved, to transmit it forthwith to the rating authority (*t*). It is then to be deposited at the offices of the rating authority, and to be open to inspection for twenty-one days from the date on which notice of the deposit of the list is published, and notice of the deposit is to be published immediately upon the deposit. Notice of the deposit is also to be sent to the county valuation committee (*u*).

The assessment committee are not required to hear and determine all objections to the draft list before finally approving it. They may hear them after the final approval of the list as if they were proposals, and with like consequences (*a*). In such cases, and where the decision is upon a proposal, or an objection to a proposal, notice of appeal must be given within twenty-one days after the date of the decision (*b*).

It would appear, however, that the courts do not regard the time within which notice of appeal is to be given as a strict limitation. It has been held in relation to somewhat similar provisions in former Acts, that although an appellant has given insufficient notice, or even no notice, he is entitled as a matter of right to have his appeal entered (*c*). [409]

Notice of appeal is to be given to the clerk of the court. A copy of it must also be served by the appellant on the assessment committee; and if they are not the appellants, on the rating authority;

(*q*) R. & V.A., 1925, s. 32 (8); 14 Halsbury's Statutes 661.

(*r*) *Ibid.*, Sched. V., Part I, r. 1.

(*s*) *Ibid.*, s. 28 (1).

(*t*) *Ibid.*

(*u*) *Ibid.*, s. 28 (4), and Sched. IV., Part I. (1), (2), (4); 14 Halsbury's Statutes 656, 696.

(*a*) *Ibid.*, Sched. IV., Part III., para. 10.

(*b*) *Ibid.*, s. 37 (8).

(*c*) Cf. *R. v. Eyre* (1856), 6 E. & B. 992; 38 Digest 614, 1389; *Denaby Overseers v. Denaby and Cadeby Main Collieries*, [1909] A. C. 247; 38 Digest 614, 1391.

and, where the appeal relates to a particular hereditament, on the occupier (*d*). Notice need not be given to the occupier, however, where it is proposed to make reference to other hereditaments for purposes of comparison only (*e*), or where appeal is made by an owner who seeks to secure a reduction of the assessments on his property (*f*). But if appeal is made against the assessment on property in the occupation of another and alteration of the assessment is sought, notice must be served on the occupier (*g*), as otherwise his interests may be affected without his knowledge.

An owner who is rated instead of the occupier, or who has entered into agreement to pay the rates for his tenants, is entitled to notice in addition to any notice to be served on the tenants (*h*).

Where the name of an owner or an occupier is unknown, notice may be addressed to the "owner" or the "occupier" of the premises (naming them) without further name or description (*i*). [410]

Service of any notice required under the R. & V.A., 1925, may be by any of the methods permitted in sect. 59 (1) of the Act (*k*). If the service is by post, regard should be had to sect. 26 of the Interpretation Act, 1889 (*l*).

Service of notice on an assessment committee or any public or local authority will be good if the notice is in writing and delivered or sent by post to the office of the authority, addressed either to the authority or to their clerk. If the notice is to be sent by any authority or body it will be sufficiently authenticated if signed by the clerk of the authority or body (*m*), or by the assistant clerk or other officer if authorised by the authority (*n*).

An assessment committee, rating authority or county valuation committee, by special or general resolution, may authorise any of their officers to institute and carry on or defend any proceedings in relation to the valuation list (*o*). [411]

The notice of appeal may include several hereditaments if they are comprised in the same valuation list (*p*). The words of the Act show that any occupier or ratepayer may include in the same appeal all or any hereditaments of which he is the occupier or ratepayer, and would seem to imply that several hereditaments cannot be included in one notice of appeal, if the appellant is not the occupier of them or the ratepayer. It has been held, however, that the section does not annul

(*d*) R. & V.A., 1925, Sched. V., Part I., rr. 1, 2; 14 Halsbury's Statutes 699.

(*e*) *Pointer v. Norwich Assessment Committee*, [1922] 2 K. B. 471; 38 Digest 582, 1162.

(*f*) R. & V.A., 1928, s. 4 (2); 14 Halsbury's Statutes 711.

(*g*) R. & V.A., 1925, Sched. V., Part I., r. 2 (b); *ibid.*, 699.

(*h*) *Ibid.*, s. 11 (8); *ibid.*, 635.

(*i*) *Ibid.*, s. 59 (2); *ibid.*, 680.

(*k*) 14 Halsbury's Statutes 680.

(*l*) 18 Halsbury's Statutes 1002 (Service by post): "the service shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the document, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post." As to the necessity for proving prepayment of postage, see *Walthamstow U.D.C. v. Henwood*, [1897] 1 Ch. 41; 61 J. P. 23; 38 Digest 171, 143; and see *R. v. St. Pancras Assessment Committee, ex parte Shoolbred's Depositories, Ltd.* (1937), 26 Rat. Inc. Tax Rep. 116 (notice by post good although not received).

(*m*) R. & V.A., 1925, s. 59 (3); 14 Halsbury's Statutes 680.

(*n*) *Ibid.*, s. 68 (1), definition "Clerk."

(*o*) *Ibid.*, s. 31 (9).

(*p*) *Ibid.*, s. 45.

the Poor Rate Act, 1801 (*g*), and the county valuation committee may serve one notice of appeal in respect of a number of hereditaments in the same area (*r*). It is clear that as the term "ratepayer" means every person who is liable to any rate on property in the valuation list (*s*), an owner rated under sect. 11 (1), or who has agreed to pay the rates under sect. 11 (2), will be entitled to include in one notice any or all of the hereditaments of which he is the ratepayer. [412]

The notice is not required to be in any particular form, but it must specify the grounds of appeal (*t*).

It has been objected that appeal cannot be made on grounds which were not raised at the hearing before the assessment committee. The contention was considered by the House of Lords in *Gateshead Assessment Committee v. Redheugh Colliery, Ltd.* (*u*), who ruled that an appellant should not be held too closely to points taken before the assessment committee; and *semble*, it is essential to enable a contention to be raised at quarter sessions that it shall have been made before the assessment committee. At the same time it was clearly the opinion of the House of Lords that before a contention can be dealt with on appeal, it must be included in the notice of objection to the valuation list. In the words of the Lord Chancellor: "If the notice specified as the grounds of objection all or any of the grounds referred to in sect. 18 of the Act of 1862 (*a*), such as unfairness or incorrectness in the valuation of a specified hereditament or the omission of any rateable hereditament from the list, the notice was sufficient; and that it was not necessary that the objector should in his notice inform the committee of the reasons upon which he based his objection or the arguments by which he proposed to support it." [413]

To enable a person to appeal, the R. & V.A., 1925 (*b*), requires only that he shall have appeared before the assessment committee; and it has been held that if the objector or any one of the parties appear, although they do not submit evidence, they do not lose the right of appeal (*c*).

On receiving a notice of appeal relating to the draft list the clerk to the court is to enter the appeal for hearing at the next sitting of the court to be held after the expiration of thirty-five days from the date on which the list was finally approved, or if the appeal is from a decision on a proposal the time runs from the date of the decision, but on application by any party the court may postpone the hearing and enter it for some later sitting (*d*). [414]

Assessment Appeal Rules.—Items of procedure are set out in the R. & V.A. (Assessment Appeal) Rules, 1927 (*e*).

Any person upon whom a copy of a notice of appeal is served and who intends to appear as respondent must give notice in writing within fourteen days of the service of the notice of appeal (rule 3 (1), (2)).

(*g*) 14 Halsbury's Statutes 490.

(*r*) *Glamorgan County Valuation Committee v. Barry Area Assessment Committee*, [1931] 1 K. B. 157; Digest (Supp.).

(*s*) R. & V.A., 1925, s. 68, definition "Ratepayer"; 14 Halsbury's Statutes 686.

(*t*) *Ibid.*, Sched. V., Part I., r. 3.

(*u*) [1925] A. C. 309; 38 Digest 604, 1309.

(*a*) Union Assessment Committee Act, 1862; 14 Halsbury's Statutes 531.

(*b*) S. 31 (1); *ibid.*, 657.

(*c*) *R. v. Essex J.J.* (1883), 11 Q. B. D. 704; 33 Digest 442, 1523.

(*d*) R. & V.A., 1925, Sched. V., Part I., r. 4; 14 Halsbury's Statutes 699, and *Ibid.*, s. 31 (1); *ibid.*, 657.

(*e*) S.R. & O., 1927, No. 416.

If a county valuation committee intends to appear as respondent, the notice is to be given within fourteen days from the date on which a copy of the notice of appeal is served on the assessment committee (rule 3 (3)). The clerk, on request in writing, must give information as to the place and the date at which the appeal will be in the list for hearing (rule 4). He may deal with applications as he thinks proper, and will communicate his decision in writing (rule 5 (1)). The application must be in writing, state the grounds on which it is made, and give the names and addresses of all parties to the appeal (rule 5 (2)). If the application is made with the consent of all the parties, it must be accompanied by the consents signed by the parties or their solicitors (rule 5 (3)). If not by consent, a copy of the application must be served upon each party (rule 5 (4)). In such case the clerk must withhold his decision for six days during which time objection may be made, and if required to do so by any party, he must give all the parties an opportunity of appearing before him (rule 5 (5)). The clerk is, however, allowed to extend the time in this case, or in any other under the rules (rule 5 (6)). The decision of the clerk upon an application is final, but the court may, upon the hearing of the appeal, grant a postponement or extension of time, on conditions as to costs or otherwise (rule 5 (7)).

The applications to which rule 5 relates are applications to the clerk for:

(a) postponing the hearing of an appeal; (b) fixing a date for the hearing; (c) fixing or altering the place of hearing; and (d) extending the time for giving notice of intention to appear as respondent, or for lodging a statement of case (rule 5 (8)).

Application to the court under the rules is by seven clear days' notice of motion to be served on the clerk and on parties to the appeal (rule 6). [415]

Statement of Case by Parties.—If the net annual value of the hereditament to which the appeal relates exceed £200, the appellant, within fourteen days from the date of notice of the respondent's intention to appear, is to state in writing his case and the facts to be proved and the points of law, if any, to be argued. Two copies of the statement are to be served on the clerk, and one copy on each person who has given notice of intention to appear (rule 8 (a)). Each respondent, within fourteen days of receiving the appellant's case, must state in writing his case and the facts to be proved and the points of law (if any) to be argued. Two copies of the statement are to be served on the clerk and one copy on the appellant (rule 8 (b)). If the appeal is to county quarter sessions, each party before the day fixed for the hearing, must supply six additional copies of the statement for the use of the court (rule 8 (c)). If the case presented is not, in the opinion of the court, indicated with reasonable particularity in the statement of the case, the court must make such order as to adjournment, costs or otherwise as they deem just and equitable (rule 8 (d)). [416]

Costs.—Costs, including costs directed by an arbitrator, are to be taxed by the clerk (rule 10). The costs to be allowed are specified in Part I. of the schedule to the order. The scale of fees may not be exceeded except by order of the court, or if the clerk for special reasons considers the amounts inadequate (rule 11).

Objection may be made to any item of costs, and any party dissatisfied may, within five days, ask for the taxation to be reviewed. If required the clerk will state in writing the reasons for his decision

(rule 12 (1), (2)). Any party dissatisfied with the decision of the clerk may within ten days apply to the court to review the taxation. The taxation of the clerk is, however, final on all matters not objected to (rule 12 (3)). Any period of time limited by rule 12 may be extended by the clerk (rule 12 (4)).

The fees to be paid to the clerk are specified in Part II. of the schedule to the order, and the matter in respect of which fees are payable (rule 13).

The court will appoint a person to act in lieu of the clerk where the clerk is also an officer of any authority or committee which is a party to an appeal. The person so appointed will be entitled to receive a fee calculated according to the scale in Part III. of the schedule to the order (rule 14 (1), (2)).

Service of documents under these rules is to be in accordance with sect. 59 of the R. & V.A., 1925 (*f*) (rule 15). [417]

The Respondent.—Any person on whom a copy of a notice of appeal is required to be served may appear as respondent. If there is more than one respondent, as, for example, an assessment committee and a rating authority, the appellant is liable only for the costs of one of them; and if costs are ordered against the appellant they may be apportioned among the several respondents as the court thinks fit. If the county valuation committee or a local authority are the appellants, the occupier of a hereditament to which the appeal relates may at any time before the hearing of an appeal, instead of appearing as respondent, give notice that he desires to be called as a witness (*g*). He thus escapes liability for costs, while retaining the right to give evidence.

A county valuation committee may appear as a party to any appeal under Part II. of the Act, either alone or in conjunction with a rating authority, an assessment committee, or other county valuation committee (*h*).

A person served with a copy of a notice of appeal is not a party to the appeal unless he has given notice in accordance with the rules of his intention to appear as respondent (*i*).

A person omitting to give such notice may be heard in opposition to the appeal, but upon such terms as the court may think fit to impose (*k*). [418]

Powers of Court.—Quarter sessions under the R. & V.As., 1925–1938, are empowered to hear and determine appeals against the decision of an assessment committee and to exercise the duties relating to such appeals prescribed in these Acts. The R. & V. (Apportionment) Act, 1928, is to be construed as one with the principal Act (*l*) (that is, outside London, the R. & V.A., 1925, as amended by any subsequent enactment), and the provisions of that Act relating to the valuation list apply (*m*).

Only a person who is aggrieved by the decision of the assessment committee may appeal, and his appeal is against the decision (*n*).

(*f*) 14 Halsbury's Statutes 680.

(*g*) R. & V.A., 1925, s. 31 (2); 14 Halsbury's Statutes 657.

(*h*) *Ibid.*, s. 18 (3); *ibid.*, 643.

(*i*) R. & V.A. (Assessment Appeals) Rules, 1927, r. 2.

(*k*) *Ibid.*, r. 3 (2).

(*l*) S. 10 (2).

(*m*) S. 1 (2).

(*n*) R. & V.A., 1925, s. 31 (1); 14 Halsbury's Statutes 657.

The 1925 Act directs that on an appeal the court shall, as it thinks just, either confirm the valuation list or alter the valuation list to give effect to the contention of the appellant so far as that contention appears to the court to be well founded (*o*). It would appear, therefore, from the language of the Statute that it is not within the province of quarter sessions to determine any appeal other than an appeal against the decision of an assessment committee. Thus, for example, the constitution of the assessment committee, or the conduct of their proceedings, are not matters with which quarter sessions are empowered to deal. If, therefore, it is contended that the assessment committee was illegally constituted, by reason, for example, that some of the members were disqualified, the remedy would be by prohibition directed to the assessment committee (*p*). If they refuse to hear, or refuse to give a decision, the procedure may be by *mandamus* to compel the committee to hear or to determine (*q*). [419]

On appeal the court re-hear the case (*r*) and may confirm the valuation list, or they may alter it to give effect to the contention of the appellant (*s*). But the Act makes no provision for objection to the whole list, or proposal for a declaration that the list is invalid, and it would appear that quarter sessions may not quash it. Their power to alter it, however, is unlimited, and any number of assessments may be altered, if proper objections or proposals to that end have been made.

If, therefore, appeal is made that certain classes of property have been increased in value without any individual valuations having been made, as in *Stirk and Sons, Ltd. v. Halifax Assessment Committee* (*t*), or that some properties of a class have been valued while others of the same class have not, as in *Double v. Southampton Assessment Committee* (*u*), or that there has been valuation of certain classes of property in the area but not of others, as in *Hunter v. Swindon Assessment Committee* (*a*), quarter sessions would not under the present law quash the lists. They would be able to alter the assessment to which the appeal relates, but not to alter the assessments on other properties found to be equally entitled to relief but not under appeal (*b*).

The procedure is cumbersome where a county valuation committee or a rating authority seek to bring about uniformity by the amendment, *e.g.* in some cases of whole classes of assessments; but no course appears to be open to them other than by objection or proposal in each individual case.

As the court in their decision can only give effect to the contention

(*o*) R. & V.A., 1925, s. 31 (4).

(*p*) Cf. *R. v. North Worcestershire Assessment Committee*, [1929] 2 K. B. 397 Digest (Supp.).

(*q*) *R. v. St. Mary Abbots, Kensington Assessment Committee*, [1891] 1 Q. B. 378, C. A.; 38 Digest 582, 1159, approved in *R. v. North Worcestershire Assessment Committee* (*supra*), as applicable under R. & V.A., 1925, and *R. v. West Norfolk Assessment Committee, Ex parte Ward* (1930), 94 J. P. 201; (1926-31), 1 B. R. A. 418, C. A.; Digest (Supp.).

(*r*) *Bottomley v. West Derby Assessment Committee*, [1932] 1 K. B. 40; (1926-31), 2 B. R. A. 846, C. A.; Digest (Supp.).

(*s*) S. 31 (4), *supra*.

(*t*) [1922] 1 K. B. 264; 38 Digest 531, 1157.

(*u*) [1922] 2 K. B. 213; 38 Digest 579, 1145.

(*a*) [1922] 2 K. B. 630; 38 Digest 609, 1355.

(*b*) S. 45; 14 Halsbury's Statutes 672. As to notice to third parties, see "Notice of Appeal," *ante*; and cf. *Glamorgan County Valuation Committee v. Barry Area Assessment Committee*, [1931] 1 K. B. 157; Digest (Supp.).

of the appellant (c), it follows that on appeal they cannot increase an assessment unless the ground of appeal is that a hereditament is under-assessed.

The decision of quarter sessions on evidence of fact is final, and there is no appeal from it, but application may be made, within twenty-one days after the decision, to have a case stated for the opinion of the High Court on a point of law, and the court must state a case unless it is of opinion that the application is frivolous (d). [420]

Consent Orders.—Where the terms have been agreed upon, and application sent to the clerk, the court may make an order or enter judgment, in accordance with the terms of the application, without the attendance of the parties (e).

On the application of any party to the appeal, either before the hearing, or at any time during the hearing before evidence as to value is adduced, the court may appoint a person to make a valuation of the hereditaments in relation to which the appeal is made, and the valuer may be called as a witness and cross-examined. Costs of the valuation are costs of the appeal, but are payable in the first instance by the applicant and except where the applicant is a public authority, he will be required to give security (f).

The court may allow an amendment of the grounds of appeal, but upon such terms as to costs, adjournment or otherwise as it thinks fit (g), and the decision of the court as to the sufficiency of the statement of the grounds of appeal, and as to the amending or refusing to amend them, is final.

Special powers are given to quarter sessions on appeal relating to hereditaments containing machinery and plant (h). If the question is raised whether any particular plant or machinery falls within any of the classes or descriptions specified in the Plant and Machinery (Valuation for Rating) Order, 1927 (i), the question may, with the consent of the parties, be referred by the court to be determined by a member of the panel of referees set up for the purpose, whose award on the point at issue is final and conclusive (k). [421]

Costs.—Quarter sessions in performance of the duties delegated to them by the R. & V.As. have all the same powers as to costs between party and party and other matters under the Quarter Sessions Act, 1849, or otherwise as if they were the court of quarter sessions (l). [422]

Arbitration.—As an alternative to hearing at quarter sessions after notice of intention to appear has been given, the appellant and the

(c) R. & V.A., 1925, s. 31 (4); 14 Halsbury's Statutes 658.

(d) *Ibid.*, s. 31 (5); 14 Halsbury's Statutes 658; cf. *Consett Iron Co., Ltd. v. Durham County Assessment Committee*, [1931] A. C. 396; Digest (Supp.).

(e) R. & V.A. (Assessment Appeals) Rules, 1927, ante, r. 7; 14 Halsbury's Statutes, 800.

(f) R. & V.A., 1925, s. 33; 14 Halsbury's Statutes 661.

(g) Quarter Sessions Act, 1849, s. 3; 11 Halsbury's Statutes 294.

(h) R. & V.A., 1925, s. 24; 14 Halsbury's Statutes 650.

(i) S.R. & O., 1927, No. 480; *ibid.*, 793-798; and see the Plant and Machinery (Valuation for Rating) Rules, 1927; S.R. & O., 1927, No. 479; *ibid.*, 789.

(k) R. & V.A., 1925, s. 24 (7), (9); *ibid.*, 650, 651. For procedure on reference to a member of a panel, see the Plant and Machinery Rules, *supra*; *ibid.*, 789.

(l) R. & V.A., 1925, s. 32 (3); *ibid.*, 660. As to scale of fees chargeable under the R. & V.A., 1925, *supra*, see R. & V.A. (Assessment Appeals) Rules, 1927; S.R. & O., 1927, No. 416; R. & V.A. (Assessment Appeals) (Amendment) Rules, 1932; S.R. & O., 1932, No. 824).

respondent may agree in writing either to refer the matter in dispute to arbitration, or to appoint a person to value any hereditament; to accept the valuation as binding, and to treat the costs as part of the costs of the appeal (*m*). The parties themselves may agree on the arbitrator, or in default the President of the Surveyors Institution will appoint. They may also agree that the award of the arbitrator shall be final and conclusive on all questions whether of fact or of law. The costs of the hearing and of his award are in the discretion of the arbitrator, but may be taxed, if not agreed, as part of the costs of the appeal (*n*).

The award of the arbitrator may be enrolled at quarter sessions, and quarter sessions must then issue an order to give effect to the award (*o*). Where the award enrolled at quarter sessions involves an alteration of the valuation list, the clerk of the court must advise the county valuation committee and the assessment committee, and specify the alteration to be made in the list (*p*). The assessment committee must then make the necessary alteration in the valuation list (*q*), and the rating authority must amend the rate accordingly (*r*). The fees that may be allowed to an arbitrator are specified in the Rules (*s*). [423]

Appeal from Quarter Sessions against a Rate.—There is no appeal in the ordinary sense from the decision of quarter sessions on appeal against a rate; but by the terms of the commission of the peace justices are empowered and required, if a case of difficulty arises, to obtain the opinion of a judge of the High Court. In such case, judgment of sessions is given subject to the opinion of the King's Bench Division on a special case stated by the sessions (*t*). It is entirely at the discretion of the sessions to decide if such a case of difficulty has arisen, and if they refuse to grant a case there are no means of compelling them (*u*).

Quarter sessions may not refuse to exercise its powers to hear an appeal, or if they do the King's Bench by *mandamus* may compel them to hear and determine; and if quarter sessions exceed their jurisdiction, or are not empowered to act, the proceedings may be quashed by the King's Bench on a writ of *certiorari* (*a*); but if sessions have jurisdiction, and hear an appeal, but are said to have decided wrongly, the King's Bench will not interfere (*b*).

If objection be made that sessions have no jurisdiction to hear an appeal, application may be made for a writ of prohibition, and the King's Bench have power to prevent the hearing (*c*). [424]

(*m*) R. & V.A., 1925, s. 31 (6); 14 Halsbury's Statutes 658.

(*n*) *Ibid.*, Sched. V., Part II.; *ibid.*, 699.

(*o*) *Ibid.*, s. 31 (7); *ibid.*, 659.

(*p*) *Ibid.*, s. 31 (10); *ibid.*

(*q*) *Ibid.*, s. 35; *ibid.*, 663.

(*r*) *Ibid.*, s. 28 (5); *ibid.*, 656.

(*s*) R. & V.A. (Assessment Appeals) Rules, 1927 (*ante*), Sched., Part I., 4.

(*t*) Cf. *London & North Western Rail. Co. v. Amptill Union* (1905), 2 Konst. Rat. App. 378.

(*u*) *R. v. Overseers of Walsall* (1878), 3 Q. B. D. 457, at p. 473; 33 Digest 449, 1600.

(*a*) *Ibid.*, at pp. 464, 471.

(*b*) *R. v. Leicestershire JJ.* (1813), 1 M. & S. 442; 33 Digest 389, 1004; *R. v. Monmouthshire JJ.* (1825), 4 B. & C. 844; 33 Digest 438, 1474.

(*c*) Cf. *R. v. Herford* (1860), 29 L. J. (Q. B.) 249; 16 Digest 387, 2285; *R. v. Lincolnshire County Court Judge* (1887), 20 Q. B. D. 167; 13 Digest 516, 658; *Liverpool Gas Co. v. Everton* (1871), L. R. 6 C. P. 414; 33 Digest 398, 1085.

Appeal from Quarter Sessions against the Decision of an Assessment Committee.—Unlike the procedure on appeal against a rate, any party to an appeal at quarter sessions against the decision of an assessment committee, if dissatisfied with the decision of the court on the ground that it is erroneous in point of law, may at any time within twenty-one days after the date of the decision, make application for a case to be stated for the opinion of the High Court on the point of law, and the court must state a case accordingly, unless it is of opinion that the application is frivolous (*d*). The case will be heard by a divisional court of the King's Bench, with a right of appeal to the Court of Appeal (upon notice given within fourteen days of the decision (*e*)), and thence (with leave of the Court of Appeal or the House of Lords) to the House of Lords.

It may be that the point of law involves a principle of wide reaching effect, and of such importance that an assessment committee or rating authority deem it necessary to seek the opinion of the higher courts. The costs in such case may be heavy, and beyond the means of the ratepayer appealing. An unusual provision in the Act, probably with such a case in view, allows the court to impose such conditions as it thinks fit as to the payment of costs by the party applying for the case to be stated, having regard to the importance of the question of law involved to the several parties to the proceedings (*f*). Under this provision it is in the power of the court to make it a condition that the authority appealing pay all costs of both parties in any superior court, whether they win or lose (*g*). [425]

A special case may be stated, without any hearing of the appeal by quarter sessions, if the facts are agreed and the point at issue is one of law. At any time after notice given of appeal, the parties may, by consent and order of a judge, state the facts of the case in the form of a special case for the opinion of the High Court (*h*). The case stated must declare that the parties have agreed that judgment may be entered at quarter sessions in conformity with the decision of the court (*i*). The judgment of the High Court, when entered at sessions, will be of the same effect as if given by the sessions upon an appeal duly entered and continued (*k*).

Any judgment of a superior court whether upon a case stated by a court of quarter sessions or by the parties or by an arbitrator, or upon an application for a writ of *certiorari* or otherwise, may be enrolled at quarter sessions on the application of any party interested therein; and quarter sessions are then to issue such order as may be necessary to give effect thereto; and no limit is imposed as to the time within which application is to be made (*l*). [426]

(*d*) R. & V.A., 1925, s. 31 (5); 14 Halsbury's Statutes 658.

(*e*) Rules of the Supreme Court, Ord. 58, r. 15; *Bottomley v. West Derby Assessment Committee*, [1932] 1 K. B. 40 (1926–1931), 2 B. R. A. 846, C. A.; Digest (Supp.).

(*f*) R. & V.A., 1925, s. 31 (5); proviso; 14 Halsbury's Statutes 658.

(*g*) Cf. *L. & B. Rail. Co. v. Watson* (1878), 3 C. P. D. 429; *Barker v. Phillips* (1919), 89 L. J. (K. B.) 51; 13 Digest 533, 844; *Great Western Rail. Co. v. Wills*, [1917] A. C. 148; 8 Digest 68, 461.

(*h*) Quarter Sessions Act, 1849 (Baines' Act), s. 11; 11 Halsbury's Statutes 296.

(*i*) Cf. *Peterborough Corpn. v. Thurlby Overseers* (1882), 8 Q. B. D. 586, D. C.; 33 Digest 448, 1584.

(*k*) Quarter Sessions Act, 1849, s. 11, *supra*.

(*l*) R. & V.A., 1925, s. 31 (7); 14 Halsbury's Statutes 659.

RATING AUTHORITIES

See also title : RATES AND RATING.

The councils of the boroughs, urban districts and rural districts were constituted the rating authorities in England and Wales by the R. & V.A., 1925 (*a*), and all the powers and duties of other rating authorities in relation to the making, levying and collection of rates were transferred to these councils (*b*). Overseers were abolished (*c*), and in lieu of the poor rate, general district rate, borough rate, and any other rate similarly levied on the basis of the yearly value of property, one consolidated rate, the present "general rate," was established (*d*).

By making the council area the rating area in place of the former parish, the number of urban rating authorities was reduced from 2,264 to 1,119 and of rural authorities from 12,882 to 648 (*e*). [427]

The councils have the same power of appointment and authorisation of committees as they had under sect. 200 of the P.H.A., 1875 (*f*), or sect. 56 (1) of the L.G.A., 1894 (*g*), for the purposes of the Acts relating to public health. These powers are now exercised under sect. 85 of the L.G.A., 1933 (*h*), which takes the place of the former statutes with respect to the appointment of committees. The council may not, however, delegate its power of levying, or issuing a precept for, a rate, or of borrowing money (*i*).

The county councils and assessment committees do not levy rates, but recover their expenses from the rating authorities by precept (*k*).

Rating authorities, in addition to their duty of levying and collecting the general rate and any special rates (*l*), are responsible for the preparation of the draft valuation list (*m*), and have power to object to any amendment of the list, made by the assessment committee (*n*), or to make proposals for the amendment of the valuation list as they may find necessary (*o*). In order to assist them in this work, in rural areas the parish council or the parish meeting, as the case may be, are entitled to appoint two local government electors to act as members of the rating authority. They are members of the rating authority,

(*a*) S. 1 (1); 14 Halsbury's Statutes 617.

(*b*) S. 1 (2); *ibid.*

(*c*) *Ibid.*, s. 62; *ibid.*, 682.

(*d*) S. 2; *ibid.*, 618.

(*e*) Memorandum by the M. of H. on the R. & V. Bill, 1925.

(*f*) 18 Halsbury's Statutes 711.

(*g*) 10 Halsbury's Statutes 812.

(*h*) 26 Halsbury's Statutes 352.

(*i*) *Ibid.*

(*k*) R. & V.A., 1925, ss. 9 (1), 53 (1); 14 Halsbury's Statutes 627, 676.

(*l*) As to the levy of special rates in rural areas, see title RATES AND RATING.

(*m*) R. & V.A., 1925, s. 25; 14 Halsbury's Statutes 652.

(*n*) S. 31 (1); *ibid.*, 657.

(*o*) Ss. 26 (1), 37 (1); *ibid.*, 653, 664.

however, only for purposes relating to valuation of properties in their own parish or group of parishes (*p*).

Where the registration officer does not himself prepare the lists of electors, he may require the rating authority to designate one or more of these officers to perform the duties formerly performed by overseers in relation to the preparation of the register of electors, and in practice the register of electors and the jury book are prepared by that authority (*q*).

The expenses of the rating authorities are paid out of the general rate raised for their own area (*r*). [428]

(*p*) S. 1 (4); 14 Halsbury's Statutes 618.

(*q*) See the Overseers Order, 1927; S.R. & O., 1927, No. 55.

(*r*) L.G.A., 1933, ss. 185, 188, 190; 26 Halsbury's Statutes 407, 408, 409.

RATING IN LONDON

See LONDON, RATING IN.

RATING OF MACHINERY

See MACHINERY, RATING OF.

RATING OF OWNERS

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See also titles : RATES AND RATING ;
RATING OF SPECIAL PROPERTIES.

Introductory.—It would appear that owners of property were liable to be rated under the Statute of Elizabeth (*a*), as every inhabitant, as well as every occupier, of lands, houses and other hereditaments, was to be rated, and it was held that assessments ought to be made

(*a*) The Poor Relief Act, 1601, s. 1; 14 Halsbury's Statutes 477.

according to the visible estates of the inhabitants both real and personal (*b*).

Sir Anthony Earby in the case cited, complained that the overseers did charge his tenants by their assessments and did charge him also. The judges on this held "that by the words and meaning of the statute 43 Eliz. c. 2 they are to assess the occupiers of the land, and not the lessor who received the rents; the occupier being by law only to pay the assessment." This was confirmed in a later case where it was said that "the landlord is never assessed for his rent, because that would be a double assessment, as his lessee has paid before" (*c*).

It was not, however, until 1840 that the liability of inhabitants to assessment on their real estate was definitely removed, and inhabitants were exempted from liability to be rated as such, in respect of their property (*d*).

Power to rate owners in some few exceptional cases has been conferred by statute. [429]

Sporting Rights.—When sporting rights are severed from the occupation of the land and are let, the owner may be rated. Such sporting rights are any right of fowling or of shooting or of taking or killing game or rabbits, or of fishing (*e*). [430]

Buildings Occupied in Parts.—Where a building which was originally constructed for the purpose of a single dwelling-house, or has since been adapted for that purpose, or was constructed or has been adapted partly for the purpose of a dwelling-house and partly for some other purpose, is occupied in parts, the building, or any part of it, may be treated as a single hereditament in the occupation of the person who receives the rents (*f*). This provision assumes that the parts separately occupied would be separately rateable. If the nature of the occupation of the parts is such that they cannot be separately rated, the need for this special provision does not arise.

In deciding whether a building let out in parts shall be treated as one hereditament, the local authority must have regard to all the circumstances of the case, including the extent to which the parts have been severed by structural alterations.

This is interpreted as a limitation on the extent to which the power may be exercised, and evidently intends that parts which have been so effectively severed by structural alterations that they are now in effect separate structures, shall not be included in one assessment with the rest of the parts. Thus the occupiers of self-contained maisonettes and flats under the provision would be rateable and not the owner.

It may be noted that the whole building or any part of it may be treated as a single hereditament, so that if in addition to the parts let out as dwellings, the building contains, say a shop or an office, the parts let out as dwellings, or any number of them, may be treated as one hereditament, and the shop or office as a separate hereditament.

(*b*) *Earby's Case* (1633), 2 Bulst. 354; 38 Digest 423, 1.

(*c*) *Rowls v. Gells* (1776), 2 Cowp. 451, at p. 453; 38 Digest 477, 367.

(*d*) Poor Rate Exemption Act, 1840; 14 Halsbury's Statutes 504.

(*e*) The Rating Act, 1874, s. 6; 14 Halsbury's Statutes 586; Representations of Central Valuation Committee, amended edition, pp. 59—63; and see title RATING OF SPECIAL PROPERTIES.

(*f*) R. & V.A., 1925, s. 23 (1); 14 Halsbury's Statutes 649.

The person who receives the rents is to be deemed the occupier (g).
[431]

Advertising Stations.—If land is not otherwise occupied, but is used either temporarily or permanently for the exhibition of advertisements, the person who permits the use is to be rated, or, if he cannot be ascertained, the owner. This applies to land used for the erection of a hoarding, frame, post, wall, or structure used for the display of advertisements (h). [432]

Tithes.—By the Tithe Act, 1936 (i), tithe rentcharge is abolished, but by the same Act provision is made for a payment out of the Exchequer to local authorities in view of the rates they formerly received (k). [433]

Rating of Owners—by Compulsion.—Power to rate owners in lieu of the occupiers appears to have been given for the first time in the Poor Relief Act, 1819 (l), the preamble of which recites that—

“ In many parishes, and more especially in large and populous towns, the payment of the poor's rates is greatly evaded by reason that great numbers of houses within such parishes are let out in lodgings, or in separate apartments or for short terms, or are let to tenants who quit their residences or become insolvent before the rates charged on them can be collected.”

The Act gives power to the Vestry on certain conditions to rate the owners of all houses, apartments or dwellings let at a rent not exceeding £20 nor less than £6. The advantage is not, however, on the side of the rating authority only. An extension of the system of rating owners has been recently recommended by a departmental committee on the ground that it will be of benefit to the tenant (m). They report that the evidence they have heard leaves no doubt in their minds that the best method of diminishing the number of cases where the poverty of the immediate debtor is likely to produce failure to pay and consequent risk of imprisonment, is the adoption of the system of compounding; that the quarterly or half-yearly demands for comparatively large sums from those who calculate expenses and income on a weekly basis inevitably create serious difficulties. Such demands cut across the whole habit of life of a large section of the community who have become accustomed to purchasing many articles of domestic and personal use by weekly payments; and that to require the payment of rates by a different method of budgeting is bound to lead to default in payment and to a large number of imprisonments which under another system would be avoided. [434]

The provision in the Act of 1819 has not been repealed, but it has been held (n) that by implication it was superseded by the Poor Rate

(g) R. & V.A., 1925; and see Revised Representations of the Central Valuation Committee, pp. 7—10.

(h) Advertising Stations (Rating) Act, 1889; 14 Halsbury's Statutes 597.

(i) 29 Halsbury's Statutes 926.

(k) See Tithe Act, 1936, ss. 23, 25 (4) (e), Sched. V.; 29 Halsbury's Statutes 947, 949, 967.

(l) S. 19; 14 Halsbury's Statutes 497.

(m) On Imprisonment by Courts of Summary Jurisdiction in Default of Payment of Fines and other Sums of Money, 1934, Cmd. 4649, pp. 72, 76.

(n) *West Ham (Churchwardens, etc.) v. Fourth City Mutual Building Society*, [1892] 1 Q. B. 654; 56 J. P. 438; 42 Digest 765, 1916.

Assessment and Collection Act, 1869 (*o*). This latter Act, under which owners might be compulsorily rated, or could enter into agreement to pay the rates for their tenants, remained in force until the passing of the R. & V.A., 1925 (*p*), which now supersedes all previous Acts under which the compounding system has been in force (*q*). There is no doubt that the policy of rating owners initiated by the Act of 1819 has proved beneficial both to the ratepayers and the rating authorities. It is easier for the tenants of the smaller properties to pay the rates to the owner with the rent by weekly or monthly instalments than to provide payment for three months or six months in one amount. The owner is in closer touch with the tenants than is the rating authority and has a more expeditious method of recovery of sums due. His services are at the same time recognised in the commission allowed to him under the Acts, although he may be required to pass on all or part of such allowance to this tenant if the property is within the scope of the Rent Restriction Acts (*r*).

The main provision under which owners are now rated is in sect. 11 of the R. & V.A., 1925 (*s*), by which the owner may be made liable for the rates either by compulsion or by agreement, and the powers given in the Poor Rate Assessment and Collection Act, 1869 (*t*), are repealed (*u*). In those rating areas where, at the time the 1925 Act came into force, there were provisions in local Acts for the rating of owners instead of occupiers, the authorities were empowered by resolution to keep the provisions in the local Acts in operation (*a*).

The rating authority may by resolution direct that the owners of all hereditaments in their area which do not exceed £13 rateable value, shall be rated instead of the occupiers and, if they wish, they may limit their resolution to properties the rent of which becomes payable or is collected at intervals shorter than quarterly (*b*).

The resolution may define a higher limit of value than £13 if such higher value was in force at the passing of the 1925 Act for the purposes of sect. 3 of the Poor Rate Assessment and Collection Act, 1869.

Agricultural land was expressly excluded by the section of the Act, but as all agricultural land is now exempted from rates (*c*), such exclusion is no longer needed.

The rating authority can, by their resolution, adopt a lower limit of value than £13, *e.g.* property not exceeding £10.

It is obvious from the terms of the Act (*d*) that the rating authority if they are owners of property within the conditions and limits of rateable value fixed, may rate themselves.

(*o*) 14 Halsbury's Statutes 546.

(*p*) *Ibid.*, 617.

(*q*) S. 11 (10); *ibid.*, 636.

(*r*) *Nicholson v. Jackson* (1921), 90 L. J. (K. B.) 1121; 31 Digest 567, 7149.

(*s*) S. 11 (1); 14 Halsbury's Statutes 632, amended by L.G.A., 1929, s. 71; 10 Halsbury's Statutes 930.

(*t*) Ss. 3, 4; 14 Halsbury's Statutes 546, 547.

(*u*) R. & V.A., 1925, Sched. VIII.; *ibid.*, 705; and see s. 11 (10).

(*a*) *Ibid.*, s. 11 (10); *ibid.*, 636; R. & V.A., 1928, s. 3 (2) and Sched. II.; *ibid.*, 711.

(*b*) *Ibid.*, s. 11 (1); *ibid.*, 632, amended by L.G.A., 1929, s. 71; 10 Halsbury's Statutes 930.

(*c*) L.G.A., 1929, s. 67; *ibid.*, 927.

(*d*) See R. & V.A., 1925, s. 11 (1) (b); 14 Halsbury's Statutes 632.

A resolution by the rating authority to rate owners may be rescinded, but the resolution rescinding the former resolution can take effect only on the expiration of the rate period (*e*). [435]

Allowance to Owners.—As consideration for the services required of them, owners who are compulsorily rated are to be allowed 10 per cent. of the amount of rates payable, or a greater percentage, not exceeding 15, as the rating authority may determine (*f*). The allowance may be made only where the owner pays the amount due by him within the time specified in the resolution. Payment may be required before the expiration of one-half the period of the rate, or if the rate is payable by instalments, one-half of the period of the instalment; or in both cases at such later date as may be determined (*g*).

It would appear that in fixing the time within which payment is to be made to secure the allowance, the rating authority may not make it a condition that the rate must be paid before the expiration of at least one-half of the rate period, or, if the rate is payable by instalments, of one-half of the period in respect of which the instalment is paid. They may specify a later date, but not an earlier.

An allowance must also be made to owners who occupy their own premises, where the rating authority are themselves owners of hereditaments to which the resolution applies, and any part of the allowance can be shown to be passed on by the authority to their tenants. Unless the contrary is proved, the allowance passed on to the tenant by the authority is deemed to be 5 per cent. of the amount payable in respect of rates.

To secure any allowance to which he may be entitled the owner occupier must pay the rates within the time specified in the resolution (*h*).

The Act seems to suggest that the rating authority have a discretion as to whether they will pass on any part of the allowance to their tenants or not, but this can only be so in the case of hereditaments other than dwelling-houses, and in the case of dwelling-houses which are not within the Rent Restriction Acts. The clause 11 (1) (b) was added during the passage of the Bill. As far as dwelling-houses coming under the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (*i*), are concerned it is doubtful, in view of the decision in *Nicholson v. Jackson* (*k*), whether a claim that no part of the allowance was passed on to the tenant could be maintained (*l*).

Owners who are required to pay the rates on their property do not lose the right to recover from their tenants the amounts paid on their behalf, and which the occupier is liable to pay (*m*). [436]

(*e*) R. & V.A., 1925, s. 11 (3); 14 Halsbury's Statutes 634.

(*f*) *Ibid.*, s. 11 (1) (a); *ibid.*, amended by R. & V.A., 1928, s. 3 (1); *ibid.*, 710; and R. & V.A., 1932, s. 1 (2); 25 Halsbury's Statutes 537.

(*g*) R. & V.A., 1925, s. 11 (1) (a); 14 Halsbury's Statutes 632.

(*h*) *Ibid.*, s. 11 (1) (b); *ibid.*

(*i*) S. 2 (1) (b); 10 Halsbury's Statutes 333.

(*k*) (1921), 90 L. J. (K. B.) 1121; 31 Digest 567, 7149.

(*l*) See *Evans v. Baxter* (1930), 46 T. L. R. 270; Digest (Supp.), where it was held that the decision in *Nicholson v. Jackson* applied to the allowance under s. 11 (1) of the R. & V.A., 1925.

(*m*) *Ibid.*, s. 11 (9); 14 Halsbury's Statutes 636.

Rating of Owners by Agreement.—The rating authority, in addition to compulsory rating, are given the option of several methods by which they may by agreement recover the rates from owners (*n*).

The owner may by agreement in writing undertake: (A) to pay the rates on his property whether it is occupied or not, when the rating authority may agree to make him an allowance not exceeding 15 per cent.; or (B) that he will pay the rates so long as the property is occupied, when seven and one-half per cent. may be allowed; or (C) that he will collect the rates on behalf of the authority, when 5 per cent. may be allowed.

These agreements are not restricted to any limit of rateable value. They may include any property the rent of which becomes payable or is collected at intervals shorter than quarterly and the agreement may be in respect of any such hereditament. So that an owner may compound for part only of his property, if the rating authority consent.

While an authority may rate themselves as owners under sect. 11 (1) it does not appear that they can agree with themselves under sect. 11 (2) and this subsection will not apply to properties owned by them.

[437]

Under the terms of the above agreements, the owner will be liable for the full rate due, in class A (*supra*) whether the property is occupied or not, and in class B for the period of occupation. In class C he will pay only the proportion of what he is able to collect, but this does not apply to rates accruing due before the agreement comes into operation (*o*).

In each of the three classes, to secure the allowance, the owner must pay the rates within the time specified in the agreement.

Hereditaments which would otherwise be rated upon the owner under the compulsory clause, may be included in a voluntary agreement; but any allowance made under the agreement in such case is in substitution for the allowance to which the owner would otherwise be entitled (*p*).

The agreements may be terminated by notice on either side, given before the commencement of the rate period, but will take effect only on the termination of that period. Notice cannot be given during the currency of a rate to determine the agreement at the end of that rate. Until such notice is given the agreement will remain in force, and if there is a change of ownership, it will continue binding on the new owner as if it had been made with him (*q*).

Owners who are rated by resolution of the rating authority, or who enter into agreement to pay the rates, are required under penalty on demand to supply the rating authority with a list of the occupiers of the property for which they are rated, with particulars of the periods of occupation, and of any amounts which they have failed to collect (*r*).

[438]

Recovery of the Rate.—For the purposes of sect. 11 under which owners may be rated, an "owner" is the person who is entitled to receive the rent, or where the hereditament is occupied free of rent, the person by whose permission it is so occupied (*s*). Where such an owner is rated, or has agreed to pay or collect the rates, the amount due from

(*n*) R. & V.A., 1925, s. 11 (2); 14 Halsbury's Statutes 634.

(*o*) *Ibid.*, s. 11 (5); *ibid.*

(*q*) *Ibid.*, s. 11 (3); *ibid.*

(*s*) *Ibid.*, s. 11 (11); *ibid.*

(*p*) *Ibid.*, s. 11 (2); *ibid.*

(*r*) *Ibid.*, s. 11 (6); *ibid.*

him is recoverable from him or, where the rates are collected by an agent, either from him or from the agent, in the same manner and subject to the same conditions in and subject to which rates are recoverable from occupiers (*t*). It is obviously not intended that rates shall be recovered from an owner as if he were the actual occupier of the hereditaments for which he is rated; in such a case the goods of the tenants could be seized under a warrant of distress directed against the owner.

The tenants are not, however, released from their liability for the rates; because sect. 12 of the Poor Rate Assessment and Collection Act, 1869 (*u*), is kept in operation by the Act of 1925 (*a*), and has effect as if it were re-enacted. Under this section the rating authority have the right of recovery against the occupier where the rates remain unpaid by the owner.

It has been held that although the rating authority may have decided by resolution to rate an owner, and to allow him a percentage from the rate if payment is made by a stated time the authority may take proceedings to enforce payment before the expiration of the time stated (*b*). [489]

(*t*) R. & V.A., 1925, s. 11 (4); 14 Halsbury's Statutes 634.

(*u*) 14 Halsbury's Statutes 549.

(*a*) R. & V.A., 1925, s. 11 (7); *ibid.*, 635.

(*b*) *Lowery v. Kingston-upon-Hull Corpn.*, [1930] 1 K. B. 368; Digest (Supp.).

RATING OF SPECIAL PROPERTIES

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See also title : RATES AND RATING.

Introductory.—The principle on which special properties are rated is the principle which applies to all hereditaments. The value to be found is the annual rental value at which the property might reasonably be expected to let (*a*).

(*a*) See definition of gross value, R. & V.A., 1925, s. 68; 14 Halsbury's Statutes 687.

Special enactments have granted relief from rates on particular classes of property. Agricultural land and buildings (not dwelling-houses) have been relieved of all rates (*b*).

Exemption has been allowed on churches and chapels (*c*); light-houses, buoys and beacons (*d*); non-provided schools (*e*); scientific, literary and art societies (*f*); polling stations at parliamentary elections (*g*), or elections of county or borough councillors (*h*); and exemptions and privileges granted under local Acts are still in force (*i*).

Ambassadors and their servants are not rateable in respect of their residences (*k*). [440]

Some machinery which was formerly rated as part of the hereditament is now no longer liable to assessment (*l*), and rates on industrial and freight transport hereditaments are to be charged only in part (*m*). These provisions, however, do not concern the principle on which assessments are made, but are in the nature of relief from rates to the occupier of the particular properties.

Parliament has put limits on the values at which some hereditaments may be rated. Thus land acquired by a burial board or other authority under the Burial Acts, 1852 to 1906, cannot be assessed on a higher value than that at which the land was assessed at the time of acquisition (*n*).

Property acquired by the Postmaster-General under the Telegraph Act, 1868, may not be assessed at a value higher than that at which the property was assessed or assessable at the date of its acquisition by him (*o*), and provision is made for the basis on which agricultural dwelling-houses may be assessed (*p*). [441]

Agricultural Dwelling-Houses.—The gross value of a house occupied in connection with agricultural land and used as the dwelling-house of a person who (a) is primarily engaged in carrying on or directing agricultural operations on that land; or (b) is employed in agricultural operations on that land in the service of the occupier thereof and is entitled, whether as tenant or otherwise, so to use the house only while so employed, shall, so long as the house is so occupied and used, be estimated by reference to the rent at which the house might reasonably be expected to let from year to year if it could not be occupied and used otherwise than aforesaid (*q*). The Act thus provides for the assessment of both farm-houses and cottages. [442]

Farm-Houses.—Whether a house is actually occupied in connection with agricultural land is a question of fact. The Act does not say that the house must be situated on the land, or that the occupier must be the

(*b*) L.G.A., 1929, s. 67; 10 Halsbury's Statutes 927. See title DERATING Vol. IV., p. 342.

(*c*) Poor Rate Exemption Act, 1833, s. 1; 14 Halsbury's Statutes 500.

(*d*) Merchant Shipping Act, 1894, ss. 634, 731; 18 Halsbury's Statutes 379, 407.

(*e*) Education Act, 1921, s. 167 (1); 7 Halsbury's Statutes 211.

(*f*) Scientific Societies Act, 1843, s. 1; 10 Halsbury's Statutes 477.

(*g*) The Ballot Act, 1872, s. 6; 7 Halsbury's Statutes 431.

(*h*) L.G.A., 1933, Sched. II., Part III., para. 4 (3); 26 Halsbury's Statutes 480.

(*i*) R. & V.A., 1925, s. 64 (1) (*b*), (*c*); 14 Halsbury's Statutes 688.

(*k*) Diplomatic Privileges Act, 1708; 3 Halsbury's Statutes 503.

(*l*) R. & V.A., 1925, s. 24; 14 Halsbury's Statutes 650.

(*m*) L.G.A., 1929, s. 68 (1); 10 Halsbury's Statutes 928.

(*n*) Burial Act, 1855, s. 15; 2 Halsbury's Statutes 223.

(*o*) S. 22; 19 Halsbury's Statutes 250.

(*p*) L.G.A., 1929, s. 72; 10 Halsbury's Statutes 931.

(*q*) *Ibid.*; *ibid.*

tenant of the house. As an occupier need not himself be carrying on the agricultural operations, but may be a person who is engaged only in directing the operations, a house in the occupation of a manager will come within the definition.

A farmer does not put himself out of the benefit of the Act if he occasionally sells refreshments to holiday makers, or takes in summer boarders (*r*). The value of the farm-house must not exceed "the rent at which the house might reasonably be expected to let from year to year if it could not be occupied and used other than as aforesaid" (*s*). Such value can only be determined on the facts of each case. "The object of these provisions is to secure that a person engaged in agriculture, whether as master or servant, shall have his house assessed at the sum which a person in his position would pay for it as rent, and not at some higher figure which the same house could command if it were let to some other person in another position for another purpose" (*t*). [443]

Agricultural Labourers' Cottages.—Such a cottage need not be situated on the farm, nor need the farmer be the owner. So long as the labourer is entitled to the use of the house either the farmer or the labourer may be the rateable occupier. The value of the cottage will be the rent for which it might reasonably be expected to let for the purpose to which it is restricted.

The amount fixed by an agricultural wages committee as the value at which the benefit of occupying the cottage is to be reckoned as payment of wages in lieu of payment in cash is not conclusive for the purposes of the valuation list (*u*). If, for instance, the farmer has rented a cottage for the use of his servant, it may be that the value to be ascertained is the rent that the farmer might reasonably be expected to pay for such a purpose. If the servant should be the rateable occupier, the value will be the rent a person of his class might reasonably be expected to pay under the restricted conditions of his tenancy. [444]

Compulsory Rating of Farm-Houses and Farm Cottages.—Where the rating authority, acting under sect. 11 of the R. & V.A., 1925 (*a*), has passed a resolution compulsorily rating owners of a defined class, their resolution will apply to farm-houses and farm cottages in the same way as to other hereditaments within the class defined. [445]

Canals.—As defined in the R. & V. (Apportionment) Act, 1928 (*b*), a "canal undertaking" includes any inland navigation undertaking comprising as part thereof an inland navigation used for the conveyance of merchandise; and "canal" in relation to such an undertaking shall be construed as including an inland navigation. Under the terms of this Act a river made navigable may be a canal undertaking (*c*). A railway forming part of a canal undertaking is also included (*d*). Canals

(*r*) Cf. *Boley v. Weston-super-Mare Assessment Committee* (1934), 20 Rat. Inc. Tax. Rep. 269.

(*s*) L.G.A., 1929, s. 72; 10 Halsbury's Statutes 931.

(*t*) 14 Halsbury's Statutes 465.

(*u*) See Revised Representations of the Central Valuation Committee, p. 21, para. xi.

(*a*) 14 Halsbury's Statutes 632.

(*b*) S. 5 (3); 14 Halsbury's Statutes 720.

(*c*) For "inland navigation," see *Humber Conservancy Board v. Bater*, [1914] 3 K. B. 449; 28 Digest 9, 37, and see title DERATING, Vol. IV., p. 342.

(*d*) S. 5 (2) (*b*); 14 Halsbury's Statutes 720.

are within the definition of freight-transport hereditaments (e), and are entitled to the benefits of derating (f).

For rating purposes the offices of a canal undertaking occupied and used for the general direction and management of the undertaking are not to be deemed part of a freight-transport hereditament, and no part of a canal which is primarily occupied and used for warehousing merchandise not in the course of being transported is to be included as being occupied and used for transport purposes (g), nor is any part of the undertaking which is so let out as to be capable of separate assessment, unless it is actually occupied and used for transport purposes (h). A dwelling-house, hotel, or place of public refreshment is not to be reckoned as part of a canal for derating purposes (i). [446]

Provision is also made for a reduction of the net annual value in arriving at the rateable value of any land used as a canal, or towing-path for a canal, or land covered by water (k). A gross value is not needed; and the rateable value is to be ascertained in accordance with the definition of rateable value (l), and the directions in the Second Schedule, Part II. of the R. & V.A., 1925. As the value of canals is ascertained by reference to accounts, sect. 24 of the R. & V.A., 1925, relating to the valuation of machinery, does not apply.

Canals forming part of a railway undertaking are valued under the Railways (Valuation for Rating) Act, 1930 (m), and appeal from a decision of the Railway Assessment Authority is to the Railway and Canal Commissioners (n). [447]

It is recommended by the Central Valuation Committee that the assessment of canals should be referred by the rating authority to a professional valuer (o).

The method of assessment was fully considered and is set out in *Birmingham Canal Navigation Co. v. Birmingham Overseers* (p).

Canals are rated on what is known as the "parochial principle," and the assessment is arrived at on the basis of net receipts (q).

In one of the earliest reported cases, it was held that a canal company should be rated upon the dues actually earned in each parish through which the canal passes without regard to the area of the land occupied (r), and two years later it was emphasised that if the canal in a particular rating area is more productive than other parts of the canal, either because there is more traffic, or because the tolls are higher, or the outgoings and expenses there are less, the assessment must be higher in proportion (s).

(e) S. 5 (1) (b); 14 Halsbury's Statutes 719.

(f) L.G.A., 1929, s. 68 (1) (a); 10 Halsbury's Statutes 928, and see title DERATING, Vol. IV., p. 342.

(g) R. & V.A. (Apportionment) Act, 1928, ss. 5, 6; 14 Halsbury's Statutes 719, 721. See *Bottomley v. West Derby Assessment Committee*, [1932] 1 K. B. 40; Digest (Supp.), and *Union Cold Storage Co., Ltd. v. Moon*, [1932] 2 K. B. 648; Digest (Supp.).

(h) S. 6 (3) (a); 14 Halsbury's Statutes 722.

(i) S. 6 (3); *ibid.* See also *Lee Conservancy Board v. R.* (1931), 39 Ll. L. R. 47; Digest (Supp.) (lock-keepers' cottages).

(k) R. & V.A., 1925, Sched. II., Part II., Class 3; 14 Halsbury's Statutes 693.

(l) S. 22 (1) (b); *ibid.*, 646.

(m) 23 Halsbury's Statutes 455 *et seq.*

(n) S. 9 (1); 23 Halsbury's Statutes 465.

(o) Revised Representations, Resolution 24, p. 77.

(p) (1868), 19 L. T. 311; 38 Digest 554, 942.

(q) Cf. *Kingsdon Union Assessment Committee v. Metropolitan Water Board*, [1926] A. C. 331; 38 Digest 547, 901.

(r) *R. v. Kingswinford* (1827), 7 B. & C. 236; 38 Digest 558, 969.

(s) *R. v. Lower Milton* (1829), 9 B. & C. 810; 38 Digest 557, 960.

The assessment on the whole canal undertaking must, however, represent no more than the rent which a tenant might reasonably be expected to pay for it, and, therefore, the assessments for each of the areas through which the canal passes should not together exceed the annual rental value of the undertaking as a whole. It has thus become the general practice in the first instance to value the canal as a whole, and distribute the value among the rating areas through which the undertaking extends in proportion to the profits earned in those areas; that is on the basis of the net receipts. The receipts of a canal company may be proved by the affidavit or statutory declaration of the manager or other responsible officer (*t*).

Some of the Acts authorising the construction of canals make special provision for the rating of the undertaking. In some the tolls are exempted from rateability (*u*); in others the land and buildings of the canal company are to be rated in the same proportion as the land and buildings lying near (*a*).

The effect of derating on the rating provisions of a canal Act was considered in *Grand Union Canal Co. v. Dacorum Assessment Committee* (*b*). By a private Act (*c*) the land and buildings of the company were to be rated in the same proportion as other land and buildings lying near them, and as all the lands and buildings lying near were agricultural and derated, it was held that the hereditaments of the canal company were to be deemed also to have no rateable value.

It has been held also that a partial exemption of lands "of and belonging to" a canal company extended to lands of which the company might afterwards become occupiers whether as owners or not (*d*), and also that exemption given to the original undertaking applied to extensions under later Acts (*e*). [448]

Churches and Chapels.—By the Poor Rate Exemption Act, 1833 (*f*), no person is liable to be rated, or to pay any poor rate for or in respect of any churches, district churches, chapels, meeting houses, or premises, or such part thereof as shall be exclusively appropriated to public religious worship; and as all the enactments relating to the poor rate apply to the general rate (*g*), and to special rates (*h*) the exemption is still in force.

If a chapel is not of the Established Church, to be entitled, it must have been certified for the performance of public religious worship under the Places of Worship Registration Act, 1855 (*i*).

The determining condition is that the chapel must be exclusively

(*t*) Railway and Canal Traffic Act, 1888, s. 48; 14 Halsbury's Statutes 243.

(*u*) Cf. *R. v. Calder and Hebble Navigation Co.* (1818), 1 B. & Ald. 263; 38 Digest 482, 401; *R. v. Monmouthshire Canal Co.* (1835), 3 Ad. & El. 619; 38 Digest 555, 946.

(*a*) Cf. *R. v. Grand Junction Canal Co.* (1818), 1 B. & Ald. 289; 38 Digest 554, 943; *R. v. Glamorganshire Canal Co.* (1860), 29 L. J. (M. C.) 238; 38 Digest 556, 950; *Warwick and Birmingham Canal Co. v. Birmingham Union* (1872), 37 J. P. 150; 27 L. T. 487; 38 Digest 556, 952.

(*b*) (1933), 102 L. J. (K. B.) 622; Digest (Supp.).

(*c*) Grand Junction Canal Act, 1794.

(*d*) *Regent's Canal Co. v. Hendon* (1856), 6 E. & B. 852; 38 Digest 482, 404.

(*e*) *R. v. Monmouthshire Canal Co.*, *supra*; *R. v. Barnby Dun* (1835), 2 Ad. & El. 551; 38 Digest 511, 649.

(*f*) 14 Halsbury's Statutes 500.

(*g*) *R. & V.A.*, 1925, s. 2 (3); 14 Halsbury's Statutes 619.

(*h*) S. 3 (2); *ibid.*, 622.

(*i*) 6 Halsbury's Statutes 1229 *et seq.*

appropriated to public religious worship. It has been held that a Salvation Army barracks where a newspaper was sold and meetings were held and entrance money charged, was not exempt because it did not comply with this condition (*k*).

The premises are not, however, made liable because they are used as a Sunday school or infant school, or for the charitable education of the poor (*l*), and the exemption applies to any part of premises exclusively appropriated to public religious worship. A single room may thus be exempt, or a part of a chapel though not structurally separated (*m*).

It has been held that college chapels are rateable (*n*), and in some cases school chapels are rated (*o*). Private chapels do not appear to be entitled to exemption, as the relief applies only to places of public worship. Nor does the exemption apply to vacant land, though set aside for a Sunday school (*p*). [449]

Cemeteries.—Burial grounds are not all assessable on the same basis. Land purchased or acquired under the Burial Acts, 1852 to 1906 (*q*), for the purpose of a burial ground (with or without any building erected or to be erected thereon) is not to be assessed at a higher value or more improved rent than the value or rent at which the land was assessed at the time of the purchase or acquisition (*r*).

Burial grounds otherwise acquired are rateable on the same principles as other properties not protected by statute (*s*), *i.e.* on the rent for which they might reasonably be expected to let for the purpose for which they are used.

The restriction on rating in the Burial Acts does not extend to burial grounds provided by a district council under the P.H. (Interments) Act, 1879 (*t*), but applies to burial grounds transferred to any burial authority under the Welsh Church Act, 1914 (*u*).

Churchyards are not exempt from rates, nor is land used as an extension of the churchyard. In *Winstanley v. North Manchester Overseers* (*a*), it was held that the freehold being vested in the rector, he was *prima facie* in occupation; that the receipt of fees made his occupation beneficial; and that the absence of any precedent for rating a parson for his churchyard was no reason for refraining from rating him, if he was liable under the Statute of Elizabeth.

The ordinary principles of valuation, therefore, govern the rating of a churchyard, a cemetery, or a crematorium, and the assessment is arrived at on the basis of receipts and payments. All the profits must be brought into account, including receipts from the sale of land for

(*k*) *Booth v. St. Martin, Worcester* (1884), 48 J. P. 441.

(*l*) Poor Rate Exemption Act, 1833, s. 2; 14 Halsbury's Statutes 501.

(*m*) *Cardiff Archdiocese Trustees v. Pontypridd Assessment Committee* (1930), 46 T. L. R. 633; Digest (Supp.) (where part of a Roman Catholic Church was screened off for dancing).

(*n*) *Oxford Poor Rate Case* (1837), 8 E. & B. 184, at p. 211; 38 Digest 472, 326.

(*o*) *Cf. Royal Medical Benevolent College v. Epsom Union* (1902), Ryde & K. Rat. App. 82; 38 Digest 531, 765.

(*p*) *Ilford Corp'n. v. Mallinson* (1932), 96 J. P. 185; Digest Supp.

(*q*) 2 Halsbury's Statutes 190 *et seq.*

(*r*) The Burial Act, 1855, s. 15; 2 Halsbury's Statutes 223.

(*s*) See *North Manchester Overseers v. Winstanley*, [1908] 1 K. B. 835, C. A.; 38 Digest 452, 189.

(*t*) 13 Halsbury's Statutes 796.

(*u*) Ss. 8 (1) (*b*), 24 (4); 6 Halsbury's Statutes 1167, 1180.

(*a*) [1910] A. C. 7; 38 Digest 452, 189.

burial vaults, and from the sale of burial rights in perpetuity (*b*). In the case of a cemetery, as with a brickfield or a mine, it would appear that deduction for a sinking fund cannot be allowed: each of them is a wasting asset which cannot be replaced (*c*).

It may be contended that cemeteries are included in Sched. II., Part I. of the R. & V.A., 1925 (*d*), as being either land with buildings or land without buildings. As has been indicated, however, a cemetery is obviously land which cannot be maintained in a state to command the rent, and a statutory deduction for that purpose would appear to be absurd. [450]

Common Rights.—Where land over which rights of common exist comes within the definition of agricultural land in the R. & V.A. (Apportionment) Act, 1928 (*e*), it is now exempt from rates (*f*). If the rights of common, therefore, are agricultural, they will be derated with the land.

In any case a right of common is not in itself rateable. If an indeterminate number of people have a common right to the use of a piece of land, without payment and without the right to the exclusive use of any part of the land, there is no separate rateable occupation (*g*).

On the other hand, where pasture lands owned by the Corporation of Huntingdon were stocked by burgesses who so wished, it was held that those who stocked the pastures were tenants in common, and were rateable. In this case those who did stock made an annual payment of 19s. 4d. to those who did not (*h*). But in another case the corporation were owners of pasture lands, and decided annually the number of cattle each burgess might turn on, the payment to be made, and the days on which the cattle could be pastured. They retained the keys of the gates, and maintained the fences and ditches in fit condition. The profits from the land were distributed among the poorer burgesses who did not turn on cattle. It was held that the corporation were rateable, and the decision in *R. v. Watson* was doubted (*i*).

In a further case, which the court distinguished from the preceding cases, only the freemen were entitled to rights of pasturage. The pasture lands were vested in the corporation as lords of the manor. The cost of maintenance was borne by the corporation, who lost money on the common. The rights of the freemen to pasture exhausted the whole of the value of the land, and left no beneficial value to the corporation. It was held by COCKBURN, C.J., that the corporation were not liable to be rated, and BLACKBURN, J. was of opinion that the rate should be reduced to nothing (*k*).

(*b*) *R. v. St. Mary Abbott's Kensington* (1840), 12 Ad. & El. 824; 7 Digest 564, 387; *R. v. Abney Park Cemetery* (1873), L. R. 8 Q. B. 515; 7 Digest 564, 388, and see title ASSESSMENT FOR RATES, Vol. I, p. 462.

(*c*) Cf. *R. v. Westbrook* (1847), 10 Q. B. 178, at p. 203; 38 Digest 524, 723. As to deductions for expenses in general, see *R. v. St. Giles' Camberwell* (1850), 14 Q. B. 571, and *R. v. Southampton Dock Co.* (1851), 14 Q. B. 587; 38 Digest 527, 741.

(*d*) 14 Halsbury's Statutes 692.

(*e*) S. 2 (2); 14 Halsbury's Statutes 714.

(*f*) L.G.A., 1929, s. 67; 10 Halsbury's Statutes 927.

(*g*) *R. v. Churchill* (1825), 4 B. & C. 750; 38 Digest 464, 268; *R. v. Alnwick Corp.* (1839), 9 Ad. & El. 444; 38 Digest 464, 270; cf. *Kempe v. Spence* (1779), 2 Wm. Bl. 1244; 38 Digest 464, 272.

(*h*) *R. v. Watson* (1804), 5 East, 480; 38 Digest 430, 49.

(*i*) *R. v. Sudbury* (1823), 1 B. & C. 389; 38 Digest 464, 275, and see *R. v. York Corp.* (1837), 6 Ad. & El. 419; 38 Digest 430, 46.

(*k*) *Lincoln Corp. v. Holmes Common Overseers* (1867), L. R. 2 Q. B. 482; 38 Digest 464, 276.

LORD HALSBURY said in the *Brockwell Park Case* (l) that "the public is not a rateable occupier," and it was held that the local authority were not in occupation and were not rateable for the park which was vested in them, but from which they derived no benefit. The decision in *Lincoln Corpn. v. Holmes Common Overseers* would appear to have gone further, and that where the corporation are owners and occupiers, but the use of land is restricted to a limited number of freemen, the corporation are not rateable. [451]

Gas Works and Electricity Works.—The Central Valuation Committee recommend that the rating authority should refer the valuation of gas and electricity undertakings to a professional valuer, and they outline the procedure which they advise for the valuation of undertakings which extend into two or more rating areas (m).

The value to be arrived at is the net annual value as defined in sect. 22 (1) (b) of the R. & V.A., 1925 (n), and a gross value is not required. The provisions in that Act with respect to the valuation of hereditaments containing machinery and plant do not apply to the valuation of gas and electricity undertakings, the value of which is ascertained by reference to the accounts (o).

The application of the profits basis of assessment to undertakings owning hereditaments in several rating areas was approved by the House of Lords in *Kingston Union Assessment Committee v. Metropolitan Water Board* (p), where the decision of the Court of Appeal was affirmed, "that quarter sessions were wrong in refusing to look at receipts and in applying the 'contractor's principle' of percentage of capital value, and that the correct method was to have regard to the revenue account, to the receipts of the undertaking and to the statutory restrictions on the undertaking, and to apportion the rateable value of the whole so found among the several unions in proportion to the receipts in such parish" (q). CAVE, L.C., in his judgment states: "In *Sheffield United Gas Light Co. v. Sheffield Overseers* (r) the [profits] method was applied to a gas company, and enforced by BLACKBURN, J., and a strong court," and "Since that time the method has been followed in innumerable assessments throughout the country and has been constantly approved by the Courts and by this House" (s). Their Lordships did not decide that in no case can another method be adopted; but in order to justify that course it would be necessary that the authority should be satisfied that there are special circumstances in the case sufficient to make it necessary for them to exclude the recognised formula of assessment and to resort to some other principle (t).

[452]

The procedure then is to ascertain the value of the undertaking as a whole on the profits basis, and to apportion the total net annual value so found among the separate hereditaments comprised in the undertaking in the respective rating areas, in such a way that the sum of the

(l) *Lambeth Overseers v. L.C.C.*, [1897] A. C. 625; 36 Digest 247, 12.

(m) Revised Representations, pp. 25-31, 77.

(n) 14 Halsbury's Statutes 646.

(o) S. 24 (1); 14 Halsbury's Statutes 650.

(p) [1926] A. C. 331; 38 Digest 547, 901.

(q) Butterworth's Rating Appeals, 1926-1931, pp. 111, 112.

(r) (1863) 4 B. & S. 135; 38 Digest 553, 932.

(s) *Ibid.*, at p. 165.

(t) *Ibid.* CAVE, L.C., at p. 171; Lord BUCKMASTER, at pp. 179, 180, and see *Railway Assessment Authority v. Southern Rail. Co.*, [1936] A. C. 266; Digest (Supp.).

individual apportionments equals as nearly as possible the total net annual value first ascertained (*u*). The valuer will not necessarily accept the net receipts shown in the accounts of the undertaking as decisive for rating purposes. Thus, for example, the sinking fund provided in the accounts to replace the tenant's capital, say in twenty or twenty-five years, may truly represent the life of the asset to be replaced, or it may not. It is a question of fact in each case. The price of an essential commodity (*e.g.* coal) may vary so materially, that to base an assessment for the coming year or years on the price in the former year might be unfair either to the occupier or to the rating authority.

Expenditure on capital account, apart from renewals, must be excluded. Where a gas or electricity undertaking is restricted by statute as to the price to be charged to consumers, only the profits actually earned on those restricted charges may be used as the basis of assessment, and not the profits which the undertaking could make if there were no such restriction (*a*). [453]

In apportioning the value between the directly productive and the indirectly productive part of the undertaking, it was the normal practice to take 5 per cent. on the value of the works, buildings and mains, and 4 per cent. on the land, and these percentages were approved by the House of Lords in *Metropolitan Water Board v. Chertsey Assessment Committee* (*b*). In *Kingston Union v. Metropolitan Water Board* (*c*), however, it was held that it was not correct to apply a percentage to indirectly productive works which would leave little value to the productive, and in that case the net annual value of the indirectly productive portion was fixed at $2\frac{1}{2}$ per cent. on their structural value "based on the relation of the profits of the entire undertaking of the Board to the aggregate structural value of its assets." When the net annual value of the indirectly productive part has been ascertained and deducted from the net annual value of the undertaking as a whole, the residue represents the value of the directly productive parts, which is distributed among the several parishes into which they extend in proportion to the receipts earned in those parishes (*d*). [454]

In some cases it may not be possible to ascertain the expenses in each particular parish, so as to arrive at the net receipts in that parish, and it is then permissible to apportion the value attributable to the parish on the basis of the gross receipts (*e*).

It is not uncommonly found that the capacity of undertakings is in excess of present requirements, as where works have been constructed capable of meeting any increased demand that may be made upon them. In such a case, allowance should be made in the assessment for

(*u*) Cf. *R. v. West Middlesex Waterworks* (1859), 23 L. J. (M. C.) 135; 38 Digest 548, 908; *R. v. Sheffield United Gas Co.* (1863), 32 L. J. (M. C.) 169; 38 Digest 553, 932, confirmed in *Kingston Union Case*, *infra*.

(*a*) Cf. *Worcester Corp. v. Droitwich Assessment Committee* (1876), 2 Ex. D. 49, MELLISH, L.J., at p. 61; 38 Digest 550, 916; approved by the House of Lords in *Kingston Union v. Metropolitan Water Board*, [1926] A. C. 331, see pp. 342-344; 38 Digest 547, 901.

(*b*) [1916] 1 A. C. 337; 38 Digest 551, 919.

(*c*) [1926] A. C. 331; 38 Digest 547, 901.

(*d*) See *R. v. Mile End Old Town* (1847), 10 Q. B. 208; 38 Digest 552, 925; and *R. v. West Middlesex Waterworks*, *supra*, confirmed in *Kingston Union v. Metropolitan Water Board*, *supra*.

(*e*) *Metropolitan Water Board v. City of London Union Assessment Committee* (1909), 73 J. P. 142; 38 Digest 552, 927.

that proportion of the undertaking which is not in effective use (f).
[455]

Harbours, Docks.—If a harbour or dock comes under the definition “land covered with water,” the rateable value will be arrived at in accordance with Sched. II., Part II. of the R. & V.A., 1925 (g), which preserves to the occupier the right to any deduction from the net annual value to which he was entitled in the ten years ending March, 1924.

It has been held that a wet dock, *i.e.* a dock normally covered by water, comes within the definition, but the warehouses and other adjuncts must be treated as severable from the dock, and therefore not within the definition. COCKBURN, C.J. said: “If the dock, with the surrounding buildings, were taken as a whole, it would become something more than ‘land covered with water’; but that part which is the basin or reservoir is within that description” (h). It is not enough to show that land is occasionally covered with water, though that may be essential to the beneficial occupation of the land. Thus it was held that graving docks used for the examining and repairing of ships, and into which water was admitted as was needed to float ships into or out of them, are not “land covered with water” (i). Land, though it may have been excavated, will come within the description if it is used for the purposes of the dock and is covered with water (k). [456]

Freight-Transport.—A harbour or dock, occupied and used wholly or partly for dock purposes as part of a dock undertaking of which a substantial portion of the business is concerned with the shipping and unshipping of merchandise not belonging to or intended for the use of the undertakers, is a freight-transport hereditament, and entitled to de-rating (l). The offices for the general direction and management of the undertaking are excluded, but a railway forming part of the undertaking is entitled to the relief (m). A dwelling-house, hotel or place of public refreshment is not to be reckoned as freight-transport, nor is any part of the undertaking so let out as to be capable of separate assessment, unless it is actually used as part of an undertaking (n), and no part of a dock undertaking which is primarily used for warehousing merchandise not in the course of being transported, is to be included as being used for transport purposes (o). The provisions of the “de-rating” Acts do not affect the basis of assessment of the undertakings entitled to relief under those Acts; and the value is still to be arrived at on an estimate of the rent at which the undertaking may reasonably be expected to let from year to year. [457]

(f) *R. v. South Staffordshire Waterworks* (1885), 16 Q. B. D. 359, Lord ESHER, p. 369; 38 Digest 551, 920.

(g) 14 Halsbury's Statutes 693.

(h) *Newport Dock Co. v. Newport Local Board* (1862), 2 B. & S. 708; 38 Digest 474, 342, and note, it is provided that the rateable value of land covered with water is to be shown separately in the valuation list; Form of Valuation List Rules, 1926, r. 5, col. 11.

(i) *Mersey Docks and Harbour Board v. Birkenhead Corpn.*, [1916] 1 K. B. 695; 38 Digest 474, 343.

(k) *Smith's Dock Co. v. Tynemouth Corpn.*, [1908] 1 K. B. 948, C. A.; 38 Digest 474, 345.

(l) R. & V. (Apportionment) Act, 1928, s. 5 (1) (c); 14 Halsbury's Statutes 719; L.G.A., 1929, ss. 67, 68; 10 Halsbury's Statutes 927, 928.

(m) S. 5 (1) (c), proviso and s. 5 (2) (c) of the 1928 Act; 14 Halsbury's Statutes 719, 720.

(n) S. 6 (3), *ibid.*, 722.

(o) S. 6 (3) (b); *ibid.*, 722, and see title RAILWAYS, RATING OF.

A gross value is not needed (p). Docks which form part of a railway undertaking are now valued by the Railway Assessment Authority, and appeal from their decision is to the Railway and Canal Commissioners (q). The rateable value is almost invariably arrived at on accounts, as only rarely can it be that there is evidence of rent paid, or that comparison can be made with similar undertakings on rent. The procedure is much the same as with canals and gas, water and other such undertakings.

Some authorities are invested with the right to levy tolls upon vessels using the harbour in addition to dues on vessels entering the dock. Tolls are not *per se* rateable but may be taken into account so far as they enhance the value of the occupation of land, that is, whenever it appears that the occupation of the land is so connected with them that it can be said that the tolls and rates are levied on account of the occupation of the land (r). [458]

Thus, in *Blyth Harbour Commissioners v. Newsham* (s), the soil of the harbour was not vested in the commissioners, but they were occupiers of certain quays adjoining the harbour, and had the right to impose dues or tolls upon all ships entering the harbour. It was held that no part of the harbour dues, or goods dues, was to be taken into account as enhancing the value of the quays. As was said by Lord ESHER, M.R., the commissioners cannot be rated in respect of those dues for the use of the harbour, for they are not the occupiers of it. The Acts gave them a right to charge harbour dues, but not any separate right to charge dues in respect of the quays. The dues were paid for the use of the harbour, and could not be taken into account as enhancing the rateable value of the quays. In *R. v. Berwick-upon-Tweed Assessment Committee* (t), the harbour was not vested in the commissioners, but the dock was vested in and occupied by them. They were entitled to charge dues on vessels entering the harbour, and additional dues on those vessels using the dock. It was held that they were not rateable on harbour dues, even on those vessels which entered the dock, but were rateable for the dock dues. In *Swansea Union v. Swansea Harbour Trustees* (u), the trustees had converted the mouth of the river into a harbour and had made docks. The bed of the harbour was not vested in them, but they were authorised to charge harbour dues and dock dues. It was held by the Court of Appeal and the House of Lords that the harbour tolls were tolls in gross, and could not be taken into account in arriving at the rateable value of the land occupied by the trustees. [459]

It has been held by the London Quarter Sessions that the cost of dredging the docks forming part of a rateable hereditament must be treated as an expense necessary to maintain the hereditament in a state to command the rent (a), but in *White Brothers v. South Stoneham Assessment Committee* (b), it was held that the cost of dredging the river

(p) R. & V.A., 1925, s. 22; 14 Halsbury's Statutes 646, and Sched. II., Part I. note.

(q) Railways (Valuation for Rating) Act, 1930; 23 Halsbury's Statutes 455 *et seq.*

(r) Cf. *New Shoreham Harbour Comrs. v. Lancing* (1870), L. R. 5 Q. B. 489, *per* BLACKBURN, J., at pp. 496, 498; 38 Digest 506, 607.

(s) [1894] 2 Q. B. 293, 675; 38 Digest 506, 609.

(t) (1885), 16 Q. B. D. 493; 38 Digest 506, 608.

(u) (1907), 71 J. P. 497; 38 Digest 506, 610.

(a) *London and India Docks v. Stepney and Poplar Unions* (1892), Ryde's Rat. App. (1891-1893) 153; 38 Digest 560, 989.

(b) [1915] 1 K. B. 103; 79 J. P. 79; 38 Digest 529, 753.

outside the premises, was not an expense necessary to maintain the premises in a state to command the rent, and was not a proper deduction from the "gross" in arriving at the rateable value. It was a tenant's working expense which must be deducted before arriving at the gross value.

Where docks or harbours extend into more than one rating area, the apportionment of value should be, where practicable, on the parochial principle, and not on the extent of land (c).

Premises occupied in connection with docks, but capable of separate occupation, may be rated separately (d).

Evidence of receipts and expenditure is admissible in estimating the value of lairages used in connection with docks (e). [460]

Mines.—Coal mines were made rateable by the statute of Elizabeth, but other mines are not mentioned in the Act (f), and were not generally rated until the Act of Elizabeth was extended by the Rating Act, 1874 (g), to include mines of every kind not mentioned in that Act, and special provisions were made for the rating of tin, lead and copper mines. These provisions are still in force (h); but the Act does not apply to a mine of which the royalty or dues are for the time being wholly reserved in kind, or to the owner or occupier of the mine (i).

The owner or lessor of a mine other than a coal mine is rateable, therefore, where the royalty or dues are for the time being wholly reserved in kind, and it has been held that where the lessor had the option of taking the money value of the produce in lieu of the produce itself and had in fact so taken it, the case was within the exception in the Act and the owner was rateable in respect of the produce. The lessee, in the case cited, was rated for the engines, machinery, workshops and building and surface of land connected with the mine (k).

The Act of 1874 (sect. 7) sets out the procedure to be adopted in arriving at the gross and rateable value of tin, lead and copper mines, and states who may be rated. It also defines what is meant by the terms "mine," "dues," "lease" and "fine." [461]

Coal mines do not come under the special provisions of the Act of 1874, and the net annual value and the rateable value are arrived at in accordance with the R. & V.A., 1925 (l), and the L.G.A., 1929 (m), by estimating the rent which a tenant might reasonably be expected to pay (n).

The generally accepted practice is to base such estimate on the tonnage output. This, by one method, may be taken as representing

(c) *Sculcoates Union v. Kingston-upon-Hull Dock Co.*, [1895] A. C. 136; 38 Digest 562, 1001; *R. v. Kingswinford* (1827), 7 B. & C. 236; 38 Digest 558, 969; but see *Mersey Docks v. Liverpool Overseers* (1872), L. R. 7 Q. B. 643; 38 Digest 562, 1000.

(d) *Mersey Docks and Harbour Board v. Birkenhead Overseers* (1873), L. R. 8 Q. B. 445; 38 J. P. 5; 38 Digest 432, 62; *London and India Docks v. Poplar Union* (1900), 64 J. P. 820; 83 L. T. 371; 38 Digest 562, 1003.

(e) *Mersey Docks and Harbour Board v. Birkenhead Assessment Committee*, [1901] A. C. 175; 65 J. P. 579; 38 Digest 526, 735.

(f) Poor Relief Act, 1601, s. 1; 14 Halsbury's Statutes 477.

(g) S. 3; *ibid.*, 586.

(h) R. & V.A., 1925, s. 64 (1); *ibid.*, 688.

(i) Rating Act, 1874, s. 13.

(k) *Van Mining Co. v. Llanidloes Overseers* (1876), 1 Ex. D. 310, C. A.; 38 Digest 478, 374, and see *R. v. Baptist Mill Co.* (1813), 1 M. & S. 612; 38 Digest 476, 355; *R. v. St. Austell (Inhabitants)* (1822), 5 B. & Ald. 693; 38 Digest 478, 373.

(l) S. 22 (1) (b); 14 Halsbury's Statutes 646.

(m) S. 68 (1); 10 Halsbury's Statutes 928.

(n) See *Brown & Co., Ltd. v. Rotherham Union Assessment Committee* (1900), 64 J. P. 580, 583; 38 Digest 569, 1067.

the value of the underground mine, and a separate value may be put upon the surface land, buildings and plant. Where this method is adopted, it is necessary in arriving at the structural value of buildings and plant to have regard to the provisions of sect. 24 of the R. & V.A., 1925 (o), and only such machinery and plant is to be valued as is included in the Plant and Machinery (Valuation for Rating) Order, 1927 (p). The method more commonly adopted is to take the tonnage output as representing the value both of the underground and the surface workings. This has the advantage that any adjustment needed in the assessment, by reason of the rise or fall in the value of the undertaking, is proportionately applied both to the underground workings and to the surface buildings and land. The surface buildings and plant are only valuable as the mine on which they are dependent is valuable and it is reasonable that they should be valued in relation to the extent of the use to which they may be put in the working of the mine.

It has been held that it is permissible to rate a coal mine by the profits method as applied in rating gas and electricity undertakings and the output method of valuation was approved (q). [462]

The Central Valuation Committee recommend that the assessments of coal mines should be on an output basis, that the assessments should be revised annually, and that the estimate of the output should be based on the average of the actual output of two previous years, due regard being had to all other relevant circumstances (r). The tonnage rate, they advise, should be taken to represent the net annual value of the coal mine as a whole, including its mineral rights and wayleaves, as well as its surface land, equipment and other appurtenances. Where the coal mine extends into more than one rating area (s), the apportionment of net annual value should be in proportion to the coal got from each rating area and parish, to the wayleave payments, if any, and to the extent to which the coal mine is situated in each rating area and parish (t). The committee also recommend the method to be adopted for the assessment of coal mines in which coal is got from under the sea (u). [463]

A mine is an "industrial hereditament" within the meaning of that term in the R. & V. (Apportionment) Act, 1928 (a), and is entitled to the relief granted by the L.G.A., 1929 (b). The definition of the "mine" which is to be treated as an industrial hereditament, is so wide that it would appear that all mines in England and Wales are included, and are entitled to relief (c). Quarries and pit-banks are not classed as mines, but as they are factories or workshops they will not lose the relief (d), and any part of the mine premises on which a manu-

(o) 14 Halsbury's Statutes 650, 695.

(p) S.R. & O., 1927, No. 480; 14 Halsbury's Statutes 793, and see title MACHINERY, RATING OF.

(q) *Denaby and Cadeby Colliery Co. v. Doncaster Union Assessment Committee* (1898), 78 L. T. 388; 38 Digest 567, 1061.

(r) Revised Representations, p. 42.

(s) But see *Durham County Council v. Tanfield Overseers*, [1923] 2 K. B. 333; 38 Digest 567, 1058.

(t) See *R. v. Foleshill* (1835), 2 Ad. & El. 593; 38 Digest 568, 1066.

(u) As to apportionment of expenses, see *Brown & Co., Ltd. v. Rotherham Union Assessment Committee*, ante.

(a) S. 3 (1); 14 Halsbury's Statutes 715.

(b) S. 68 (1) (a); 10 Halsbury's Statutes 928.

(c) See title DERATING.

(d) Factory and Workshop Act, 1901, s. 149, Sched. VI., Part II. (26), (27)

facturing process is carried on, as for instance the manufacture of by-products, or coke-ovens, will also rank as factories or workshops.

In the rating of mines, it would not appear to be proper, when reckoning the expenses of maintenance, to allow a deduction for a sinking fund, except on the buildings and such other hereditaments as are renewable. A sinking fund is for the maintenance of the hereditament in a condition to command the rent, and a "wasting asset" such as a mine, can neither be maintained in that condition nor renewed (*e*). A mine which could not be worked, because it had been drowned out, although rent was being paid and machinery and buildings were used for pumping purposes, was held not to be rateable except in respect of the lands (*f*), and if a mine be exhausted, it is not rateable, although the occupier is bound by his covenant to pay the rent (*g*).

It has been held that an agreement to rate certain collieries on the tonnage system applied to the whole of the colliery, and a new electric power station which had been erected for the purpose of the colliery could not be rated separately so long as the agreement remained in force (*h*). [464]

Orphanages, Almshouses, Hospitals.—There are no special enactments relating to the assessment of charitable institutions, which are rateable on the same principle as other properties. The assessment is arrived at on an estimate of the rent which a tenant might reasonably be expected to pay for the institution for the purposes for which it is used. It can only very rarely happen that the occupiers of charitable institutions are in a position to pay a rent equal to the rent paid by a private person or a commercial undertaking for comparable premises.

It was held in many early cases that charitable institutions were not rateable (*i*), but the doctrine on which those cases were decided was swept away by the House of Lords in *L.C.C. v. Erith, West Ham v. L.C.C.* (*k*), which leaves no room for doubt that charitable institutions are rateable even though no profit be made from them. At the same time the decision in *Jones v. Mersey Docks* (*l*) was approved, that property held for public purposes was not exempt. It had already been held in 1801 that almshouses are rateable, and that the residents are rateable as occupiers, even though they occupy by reason of charity and are removable at the pleasure of the patrons (*m*); and in more recent years following the *Mersey Docks Case* the House of Lords has decided that a hospital is rateable (*n*).

8 Halsbury's Statutes 593, 606; and see Factories Act, 1937, s. 159 (3); 30 Halsbury's Statutes 303.

(*e*) See *R. v. Westbrook* (1847), 10 Q. B. 178; 38 Digest 524, 723; *Farnham Flint, Gravel and Sand Co. v. Farnham Union*, [1901] 1 K. B. 272, pp. 284, 285; 38 Digest 570, 1078.

(*f*) *Tyne Coal Co. v. Wallsend Parish Overseers* (1877), 46 L. J. (M. C.) 185; 41 J. P. 375; 38 Digest 567, 1057.

(*g*) *R. v. Bedworth* (1807), 8 East, 387; 38 Digest 476, 359.

(*h*) *Davis & Sons, Ltd. v. Pontypridd Union Assessment Committee* (1916), 80 J. P. 377; 85 L. J. (K. B.) 1545; 38 Digest 568, 1065.

(*i*) *R. v. St. Luke's Hospital* (1760), 2 Burr. 1053; *R. v. St. Bartholomew's the Less* (1769), 4 Burr. 2435; 38 Digest 423, 2.

(*k*) [1893] A. C. 562; 57 J. P. 821; 38 Digest 429, 42.

(*l*) (1865), 11 H. L. Cas. 443; 38 Digest 466, 286.

(*m*) *R. v. Munday* (1801), 1 East, 584; 38 Digest 452, 184; *R. v. Green* (1829), 9 B. & C. 203; 38 Digest 452, 185; both cases approved in *Poplar Assessment Committee v. Roberts*, [1922] 2 A. C. 93; 38 Digest 520, 698.

(*n*) *London Corpn. (St. Thomas's Hospital Governors) v. Stratton* (1875), L. R. 7 H. L. 477; 38 Digest 460, 243.

A hundred years ago the courts ruled that workhouses are rateable, and that there is rateability wherever the occupation is of value (o).

Incidentally it may be useful to note that an orphanage in which children resided, and in which three out of eight classrooms were used solely for the elementary education of the children in the day time, was held not to be exempt from rates as a non-provided school (p).

In arriving at the assessment of institutions maintained wholly or in part by voluntary contributions, consideration must be given to the ability of possible occupiers to pay rent. The rule of the hypothetical tenant will apply, but it will be a question whether any alternative occupier, using the premises for the same purpose, would be in any better position than the actual occupier. This ability will depend on the voluntary support they receive, and it is reasonable to take into account all the responsibilities, conditions, restrictions and circumstances under which the voluntary organisation continues in occupation of the property (q). [465]

Public-Houses, Licensed Premises—Licensed premises come under the ordinary rules of rating, and the "gross" and "rateable values" are arrived at in accordance with the definition of those expressions in the R. & V.As., 1925-1932 (r). Difficulty has, however, arisen in arriving at the rent at which such premises might reasonably be expected to let, because it is found that beer-houses and public-houses are seldom let in the open market, and an estimate of the value of the premises must take into account any enhancement there may be from the possession of a licence (s). As was said by FARWELL, L.J. in *R. v. Shoreditch*, "one of the chief elements in value of a public-house is the licence: the profitable use to which the premises can be put is dependent on the existence of the licence." Although the licence is a personal privilege conferred on an occupier, and does not attach to the premises themselves, it is a licence to carry on a specified trade at a particular place, and without the consent of the justices it cannot be exercised anywhere else, nor can any competitor start business unless licensed in the same way. While the presence of the licence and "all that could reasonably affect the mind of the intending tenant ought to be considered" (t), due allowance must be made for the licence duty payable by the tenant.

The charge payable toward the "compensation fund" is, however, not an expense "necessary to maintain the hereditament in a state to command the rent" and should not, therefore, be deducted from the gross value in ascertaining the rateable value (u).

It would appear that payments for monopoly value are subject to the same rule as payments to the compensation fund, and as monopoly value is in the nature of a capital charge, deduction should not be

(o) *Bristol (Governors of the Poor) v. Wait* (1836), 5 Ad. & El. 1, at p. 8; 38 Digest 427, 29; *R. v. Wallingford Union* (1839), 10 Ad. & El. 259; 38 Digest 462, 253.

(p) *Patriotic Fund, Royal Comrs. of v. Wandsworth Corpn.* (1903), 88 L. T. 865; 67 J. P. 311; 38 Digest 471, 320.

(q) See Central Valuation Committee, Revised Representations, Resolution 54, pp. 24, 25.

(r) R. & V.A., 1925, s. 68 (1); Sched. II., Part I., as amended by the R. & V.A., 1928, s. 2 (3); 14 Halsbury's Statutes 686, 692 and 710.

(s) Cf. *R. v. Bradford* (1815), 4 M. & S. 317; 38 Digest 565, 1035; *Cartwright v. Sculcoates Union*, [1900] A. C. 150; 38 Digest 564, 1025; *R. v. Shoreditch Assessment Committee*, [1910] 2 K. B. 859; 38 Digest 564, 1028.

(t) *Cartwright v. Sculcoates Union*, [1899] 1 Q. B. 667; Lord HALSBURY, L.C., at pp. 673, 674; 38 Digest 564, 1025.

(u) *Waddle v. Sunderland Union*, [1908] 1 K. B. 642; 38 Digest 565, 1031.

made on account of it either in arriving at the gross or the rateable value. The compensation charge relates only to on-licences granted before the Licensing Act, 1904, and the payment of monopoly value to on-licences granted since the passing of that Act, and the two kinds of payment cannot apply to the same premises (a). [466]

Method of Valuation.—It is difficult to value licensed houses on rent, or on a comparison with other similar houses on rent. The rent paid by the occupier of a “tied” house does not determine the value (b). The doctrine, however, laid down in *Bradford-on-Avon Assessment Committee v. White* (c), that the value to be arrived at is that of a “free” house, and that the rent which the brewers would be prepared to offer for a licensed house must be disregarded, was over-ruled by the House of Lords in *Robinson Brothers (Brewers) Ltd. v. Houghton and Chester-le-Street Assessment Committee* (cc). Their Lordships held that evidence as to the rents which brewers would be prepared to pay for the tenancy of a public house, whether they propose to sub-let it to a tied tenant or to occupy it themselves through a manager, is both competent and relevant in estimating the rent which a hypothetical tenant of a public-house might reasonably be expected to pay.

Failing satisfactory evidence of rental value, it is admissible, among other relevant factors, to have regard to the trade done on the premises (d). This does not necessarily mean that the valuation is to be on accounts, but if accounts are tendered, there appears now to be no ground to object to the evidence (d). It is doubtful whether information as to trade done can be required under penalty of an occupier or brewer (e). The rating authority are empowered to require a return from an occupier, owner or lessee of any hereditament containing such particulars as may reasonably be required for the purpose of carrying out the Act (f), and as an estimate of the trade done is sometimes the only means of arriving at an assessment, it would appear reasonable that the authorities should be entitled to require such information to enable them to perform the duties required of them under the statute (g). [467]

Sporting Rights.—Sporting rights were first made separately rateable by the Rating Act, 1874 (h), which extended the Act of Elizabeth (i) to include rights of fowling, of shooting, of taking or killing game or rabbits and of fishing, when severed from the occupation of the land. Before that date the value of the sporting rights was taken into account in estimating the value of the land to the occupier (k). This is the correct procedure still where the sporting right is not severed from the occupation of the land. The right of sporting in such a case is to be regarded merely as enhancing the rateable value of the land, and not as

(a) The Licensing (Consolidation) Act, 1910, s. 14; 9 Halsbury's Statutes 994.

(b) *Sunderland Overseer v. Sunderland Union* (1865), 34 L. J. (M. C.) 121; 38 Digest 566, 1048.

(c) [1898] 2 Q. B. 630; 38 Digest 567, 1052.

(cc) [1938] A. C. 321; [1938] 2 All E. R. 79; Digest Supp.

(d) *Cartwright v. Sculcoates Union*, [1900] A. C. 150; 38 Digest 564, 1025.

(e) See *Grant v. Knaresborough U.D.C.*, [1928] Ch. 310; Digest (Supp.), and Revised Representations of the Central Valuation Committee, Resolution 61, p. 111.

(f) R. & V.A., 1925, s. 40; 14 Halsbury's Statutes 668.

(g) See Recommendation of the Royal Commission on Licensing, 1929-1931, Cmd. 3988, paras. 577-580, quoted, Revised Representations Central Valuation Committee, *supra*, p. 113; and see memorandum on the Rating of Licensed Premises at pp. 102-113.

(h) S. 3; 14 Halsbury's Statutes 586.

(i) Poor Relief Act, 1601, s. 1; *ibid.*, 477.

(k) *R. (or Meyrick) v. Battle Union* (1866), L. R. 2 Q. B. 8; 31 J. P. 19; 38 Digest 500, 548.

a separate hereditament (*l*). If the right of sporting is severed from the occupation of the land and is not let, the value of the land is to be estimated as if the sporting rights were not severed (*m*). It is conceivable that sporting rights reserved by the owner for his own use may be of more value than if they remained as but a casual interest of the occupier of the land. If the rateable value of the land is increased by reason of the sporting rights reserved, the occupier of the land is entitled to deduct from his rent the portion of the rate in respect of the increase, unless he has specifically contracted to pay the amount, and if application is made by the occupier to the assessment committee they are required to certify the amount of the increase (*n*).

If the right of sporting is severed from the occupation of the land, and is let, either the owner or the lessee may be rated as the occupier, and of course will be separately rateable (*n*). The position is the same, if the owner himself occupies the land, and lets the right of sporting. It has been held in such case that the right of sporting was "severed from the occupation of the land" and that either the owner or the lessee could be rated (*o*). [468]

The owner of a right of sporting, except where the right remains with the occupier, or if severed from the occupation of the land is not let, may in any case be rated as the occupier. The owner for the purposes of the Act is the person who, if the right of sporting is not let, is entitled to exercise the right, or who, if the right is let, is entitled to receive the rent (*p*). What constitutes "severance" has presented some difficulty. It has, however, been held that the intention of the Act appears to be that "letting" applies only where the sporting right is let on lease. A person who has only a licence to fish is not contemplated as owner of the right of sporting within the meaning of sect. 6 (*q*). It follows that to constitute a severance, the sporting rights must be let by deed (*r*); but where land is let by means of an instrument not under seal, wherein the sporting rights are reserved by the owner, those rights are "severed from the occupation of the land" within the meaning of s. 3 (2) of the Act of 1874 (*s*). [469]

The Effect of Derating.—The derating of agricultural land under the L.G.A., 1929, has an important bearing upon the rating of sporting rights. Sporting rights which are separately assessed do not come under the definition of agricultural land, and still remain rateable as a separate hereditament. It has also been held that the provision of the Act of 1874, that where a sporting right is severed from the occupation of the land and is not let, the sporting right is not to be separately assessed, cannot be applied to sporting rights which are severed from the occupation of "agricultural land" (*t*); and such rights, therefore, are to be assessed separately.

(*l*) Cf. *R. v. Williams* (1854), 23 L. T. (o. s.) 76; 38 Digest 571, 1088, and see *Eyton v. Mold Overseers* (1880), 6 Q. B. D. 13; 38 Digest 572, 1092.

(*m*) Rating Act, 1874, s. 6 (1); 14 Halsbury's Statutes 586.

(*n*) *Ibid.*, s. 6 (2); cf. *Rogers v. St. Germans Union* (1876), 40 J. P. 807; 35 L. T. 332; 38 Digest 500, 549.

(*o*) *Kenrick v. Guilsfield Overseers* (1879), 5 C. P. D. 41; 44 J. P. 202; 38 Digest 500, 550.

(*p*) Rating Act, 1874, s. 6 (3), (4); 14 Halsbury's Statutes 587.

(*q*) *Swayne v. Howells*, [1927] 1 K. B. 385 (see p. 392); 38 Digest 443, 139.

(*r*) See *Wood v. Leadbitter* (1845), 13 M. & W. 833; 17 Digest 192, 26; *Swayne v. Howells*, *supra*.

(*s*) *Clebury Mortimer R.D.C. v. Childe*, [1933] 2 K. B. 368; Digest (Supp.).

(*t*) *Hastings (Lord) v. Walsingham (Revenue Officer)*, [1930] 2 K. B. 278; Digest (Supp.); *Clebury Mortimer R.D.C. v. Childe*, *supra*.

If sporting rights are exercised over agricultural land, and are not severed from the occupation of that land, they are no longer rateable (*u*).
[470]

Telegraphs and Telephones.—Telegraphs and telephones in the occupation of the Crown are not rateable under the general law.

Property acquired by the Postmaster-General under the Telegraph Act, 1868 (*a*), was expressly made rateable, but may not be assessed at a value higher than that at which it was properly assessed or assessable at the date of its acquisition by him. The limitation on the amount at which the property may be assessed continues, it would appear, even when it has ceased to be used for the purpose mentioned in the Act, and has been let to a tenant (*b*). But while the Act expressly makes this property rateable, the Crown is not made liable for the rates, and there is no process by which a rate on property acquired under the Telegraph Acts, 1868 and 1869, may be enforced (*c*). The rates will, however, be recoverable from a tenant of any part let out, if the property so let is no longer used for Crown purposes.

The wires acquired by the Postmaster-General from the National Telephone Company in April, 1896, and January, 1912, are not rateable, as they do not fall within the Act of 1868. The Postmaster-General does in fact pay contributions in lieu of rates on telegraph wires acquired under the Telegraph Act, 1868, and on telephone wires taken over from the National Telephone Company, and from the Corporation of Brighton, as an act of grace. Contributions on the trunk wires acquired from the National Telephone Company in 1896 are paid upon assessments fixed by the Treasury; on wires acquired in January, 1912, upon the assessments as they stood at June 30, 1911; and these assessments will not be increased or decreased as wires are added or removed (*d*).

Telegraphs and telephones not in the occupation of the Crown are rateable under the general law. As such properties are rarely, if ever, occupied on rent, and comparison with other similar properties is to all intents impracticable, the practice is to value the undertaking as a whole in the same manner and on the same principles as in the assessment of public utility undertakings, and to distribute the value among the various parishes over which the undertaking extends, in proportion to the profit earned by the company in those parishes (*e*).

A telegraph or telephone company is rateable for its occupation of land by wires, posts, offices or otherwise. It has been held that an electric telegraph company are rateable in respect of their occupation of land by telegraph wires and posts erected or laid down by the side of a railway, although the posts are removable at the option of the railway company (*f*), and that a telephone company is in occupation of land, and is rateable, where wires were supported, with the consent of the

(*u*) As to the person to be entered in the valuation list as the rateable occupier of sporting rights, see Central Valuation Committee's Revised Representations, pp. 62, 63.

(*a*) S. 22; 19 Halsbury's Statutes 250.

(*b*) *St. Gabriel, Fenchurch Overseers v. Williams* (1885), 16 Q. B. D. 649; 50 J. P. 533; 42 Digest 898, 75.

(*c*) See *R. v. Postmaster-General* (1873), 23 L. T. 337; 37 J. P. 196; 42 Digest 898, 74.

(*d*) See Statement issued by the Postmaster-General, Central Valuation Committee, Revised Representations, p. 99.

(*e*) See *Kingston Union v. Metropolitan Water Board*, [1926] A. C. 331; 38 Digest 547, 901.

(*f*) *Electric Telegraph Co. v. Salford Overseers* (1855), 11 Exch. 181; 24 L. J. M. C. 146; 42 Digest 897, 73.

owners or occupiers, by poles fixed in the ground, or by attachment to the roofs, chimneys, or walls of buildings over which they pass (*g*). If more than one telegraph or telephone company use the same line, it would appear that the company to be rated is the company by whom the line is provided and maintained (*h*). [471]

Tithe and Tithe Rentcharge.—Tithes were made rateable by the statute of Elizabeth (*i*), and the tithe rentcharge, which was substituted for tithes by the Tithe Act, 1836 (*k*), was at the same time made assessable to local rates in the same manner as tithes in the original Act (*l*).

By the Tithe Act, 1936 (*m*), all tithe rentcharge and extraordinary tithe rentcharge were extinguished, and are to be deemed to have no rateable value, nor are any particulars with respect to them to be entered in the valuation list (*n*).

The tithe rentcharge exempted from rates by the Act, is the tithe rentcharge issuing out of lands, and payable in pursuance of the Tithe Acts, and includes rentcharge into which a corn rent was converted under those Acts, and also extraordinary tithe rentcharge. But it does not include a rentcharge payable under the Tithe Act, 1860 (*o*), in respect of the tithes on any gated or stinted pasture, nor a sum or rate payable for each head of cattle, or stock turned, or land subject to common rights, or held, or enjoyed in common (*p*). These and any other tithes which are not tithe rentcharge or extraordinary tithe rentcharge, as defined in the Act, are still rateable. [472]

Tolls.—Tolls, in themselves, are among those incorporeal hereditaments which, since the passing of the Poor Rate Exemption Act, 1840 (*q*), are no longer rateable. They can, however, be taken into account so far as the value of land is enhanced by the value of the tolls attached or appurtenant to the land (*r*). Thus a private person building a bridge and charging tolls for the use of it was held rateable in respect of the tolls (*s*). Tolls paid for the navigation of a river may be rateable, if the towing paths and the bed of the river are vested in the authority authorised to demand the tolls, or they are in exclusive occupation of them (*t*). But if this be not so, the commissioners or other authority are not rateable for the tolls (*u*).

(*g*) *Lancashire Telephone Co. v. Manchester Overseers* (1884), 14 Q. B. D. 267; 49 J. P. 724; 38 Digest 442, 135.

(*h*) See *Paris and New York Telegraph Co. v. Penzance Union* (1884), 12 Q. B. D. 552; 48 J. P. 693; 38 Digest 447, 153, and see *New St. Helens and District Tramways Co. v. Prescott Union* (1904), 1 Konst. Rat. App. 150, D. C.; 38 Digest 448, 161.

(*i*) The Poor Relief Act, 1601, s. 1; 14 Halsbury's Statutes 477.

(*k*) 19 Halsbury's Statutes 447.

(*l*) S. 69; 19 Halsbury's Statutes 471.

(*m*) 29 Halsbury's Statutes 923.

(*n*) Ss. 23 (4), 25 (4), 29; 29 Halsbury's Statutes 947, 949, 951.

(*o*) 19 Halsbury's Statutes 535.

(*p*) S. 47; 29 Halsbury's Statutes 960.

(*q*) 14 Halsbury's Statutes 504.

(*r*) *R. v. North and South Shields Ferry Co.* (1852), 1 E. & B. 140; 24 Digest 983, 165.

(*s*) *R. v. Barnes* (1830), 1 B. & Ad. 113; *R. v. Salisbury (Marquis)* (1838), 8 Ad. & El. 716; 26 Digest 338, 680.

(*t*) *R. v. Mersey and Irwell Navigation Co.* (1829), 9 B. & C. 95; 38 Digest 469, 308; *Bruce v. Willis* (1840), 11 Ad. & El. 463; 38 Digest 511, 650.

(*u*) *Doncaster Union v. Manchester, Sheffield and Lincolnshire Rail. Co.* (1894), 71 L. T. 585; 38 Digest 510, 646, and see *Swansea Union Assessment Committee v. Swansea Harbour Trustees* (1906), 94 L. T. 627 (1907), 71 J. P. 497; 97 L. T. 585; 38 Digest 484, 422.

In *R. v. North and South Shields Ferry Co. (a)*, it was held that the landing-places of a ferry should be rated as land enhanced in value by being available for the purpose of earning the tolls, and the law relating to the assessment of tolls is recited in the considered judgment of the court.

The owner of the ferry, if he be the occupier of the landing-places, and not merely a licensee, will be rateable in respect of them. The ferry is of no value without the landing-places, and in rating them it is proper to take into account the enhancement of value from their being available for the purpose of earning the tolls (*b*). A lessee may, however, be rateable for tolls, if it is found in fact that the lease puts the lessee in possession of the hereditament for the use of which the tolls are charged, and that such possession, as in the case of *Holywell Union v. Halkyn Drainage Co. (c)*, amounts to occupation (*d*). [473]

In apportioning the value derived from the tolls of a bridge which extends into two parishes, the rateable value of the bridge should be divided in proportion to the length of the bridge in each parish (*e*).

Market tolls taken in respect of the franchise of the market and not in respect of the land, are not rateable (*f*); but stallage paid for the use of the soil is rateable (*g*). [474]

Lighthouse tolls have been held not to be rateable (*h*); they cannot be taken into account as enhancing the value of the lighthouse (*i*). Lighthouses, buoys, beacons and all light dues and other rates, fees or payments, and all other premises of the Board of Trade or Trinity House used for the purpose of the services for which the dues, rates, fees and payments are received are exempt from rates (*k*).

Turnpike tolls were exempted from all rates by the Turnpike Acts, 1822 and 1823. [475]

Tramways.—Tramways are valued by the method applied to public utility undertakings in general. The gross value on the whole undertaking is estimated, and the value so found is distributed among the parishes in which it operates in proportion to the value deemed to arise there (*l*). In some cases the apportionment has been made in proportion to the number of car-miles run in each parish (*m*). In another case it has been held permissible to divide the value of the undertaking among the various parishes according to the length of the tramway in each (*n*). The methods approved in these cases apply, of

(a) (1852), 1 E. & B. 140; 24 Digest 983, 165.

(b) *R. v. North and South Shields Ferry Co.* (1852), 1 E. & B. 140; 24 Digest 983, 165.

(c) [1895] A. C. 117; 38 Digest 424, 7.

(d) *Percy v. Hall* (1903), 67 J. P. 293; 38 Digest 510, 640; letting of tolls and toll-house of swing-bridge.

(e) *R. v. Hammersmith Bridge Co.* (1849), 15 Q. B. 369; 13 J. P. 103; 38 Digest 491, 478.

(f) *London Corpn. v. St. Sepulchre, London Overseers* (1871), L. R. 7 Q. B. 333, n.; *R. v. Casswell* (1872), L. R. 7 Q. B. 328, at p. 331; 38 Digest 509, 632.

(g) *Bedford (Duke) v. St. Paul's, Covent Garden* (1881), 51 L. J. (M. C.) 41; 38 Digest 509, 633; *Horner v. Stepney Assessment Committee* (1908), 2 Konst. Rat. App. 743; 38 Digest 509, 635.

(h) *R. v. Fowke* (1826), 5 B. & C. 814, n.; 38 Digest 507, 620.

(i) *Lancaster Port Comrs. v. Barrow-in-Furness*, [1897] 1 Q. B. 166; 61 J. P. 21; 38 Digest 507, 621.

(k) Merchant Shipping Act, 1894, ss. 634, 731; 18 Halsbury's Statutes 379, 407.

(l) *London Tramways Co. v. Lambeth* (1874), 31 L. T. 319; 38 Digest 546, 893, and see *Melbourne Tramway Co. v. Fitzroy Corpn.*, [1901] A. C. 153, P. C.

(m) *London United Tramways v. Brentford Union* (1907), 96 L. T. 528; 71 J. P. 249; 38 Digest 546, 898.

(n) *London Tramways Co. v. Lambeth*, *supra*; *Melbourne Tramway Co. v. Fitzroy Corpn.*, *supra*.

course, to the distribution of the value of the directly productive part of the undertaking, and such distribution takes place after the value of the indirectly productive part has been ascertained and deducted.

Receipts from advertisements on tramcars are to be taken into account in arriving at the rent which a tenant would give for the undertaking (o).

The tramway company are liable to assessment for the occupation of the tram lines. The public have the right to pass over them, but the company has the exclusive right to the use of the lines with flanged wheels, and for such exclusive occupation they are rateable (p).

For the purposes of the de-rating Acts, a "light railway" includes a tram-road, if it is authorised by a special Act, but not if it is laid wholly or mainly along a public carriageway, or is used mainly for the carriage of passengers (q). [476]

Waterworks.—The House of Lords ruled, in *Kingston Union v. Metropolitan Water Board* (r), that the method known as the "profits" method is the correct method to apply when valuing a water undertaking for rating purposes (s).

The "profits" method of valuation of a water undertaking may result in there being no rateable value (t). Some waterworks are restricted by statute from making any profit, as in *Worcester Corp'n. v. Droitwich Assessment Committee* (u), where it was held that the land was to be rated with reference to the amount of profit actually made and not with reference to the amount which might have been earned by the occupiers if they had not been subject to restrictions (a). [477]

In ascertaining the gross receipts of a water undertaking, loans raised by the owners for capital purposes are not to be taken into account as affecting the net annual value (b), and the proceeds of any deficiency rate raised for the repayment of loans borrowed for owners' capital purposes, or for the payment of the interest on such loans, are not to be included in the gross receipts (c). In *St. James' and Pall Mall Electric Light Co. v. Westminster Assessment Committee* (d), it was held, however, that payments made to sinking funds set aside to replace the owners' capital or to provide payments which the owner is bound by statute to make, or to return capital to shareholders or lenders, are not deductible from the gross receipts.

It is proper to take into account any part of a deficiency rate raised

(o) *North Metropolitan Tramways Co. v. St. Mary, Islington* (1874), Ryde's Met. Rat. App. 112.

(p) *Pimlico Tramway Co. v. Greenwich* (1873), L. R. 9 Q. B. 9; 38 Digest 442, 132.

(q) R. & V. (Apportionment) Act, 1928, s. 5 (3); 14 Halsbury's Statutes 720, for "light railway," see s. 5 (1) (a) (ii.); *ibid.*, 719.

(r) [1926] A. C. 331; 38 Digest 547, 901.

(s) See p. 201, *ante*.

(t) See *Peterborough Corp'n. v. Stamford Union* (1883), 31 W. R. 949; 12 Q. B. D. 1; 38 Digest 550, 917.

(u) (1876), 2 Ex. D. 49; 41 J. P. 355; 38 Digest 550, 916.

(a) *Ibid.*, MELLISH, L.J., 2 Ex. D., at p. 61, approved by the House of Lords in *The Kingston Case*, *ante* (see Lord CAVE, L.C., at pp. 342—344).

(b) See *R. v. Holme Reservoirs (Directors)* (1862), 28 J. P. 165; 10 W. R. 734; 38 Digest 550, 914, and *R. v. Blackfriars Bridge Co.* (1839), 9 Ad. & El. 828; 38 Digest 428, 39.

(c) *Metropolitan Water Board v. St. Marylebone Assessment Committee*, [1923] 1 K. B. 86; 38 Digest 547, 903.

(d) [1934] A. C. 83; Digest (Supp.).

by the occupier to make up a deficiency in the income from rents which he is able to obtain (*e*). Two Scottish cases are of interest on the point. In one it was decided that exceptional rates raised to wipe out a deficit were excluded from revenue (*f*); in another, that a proportion of the Exchequer grant for loss on de-rating must be included in the revenue of the undertaking (*g*).

It has been held that there should be no deduction for tenants' profits where an undertaking is bound to devote all its receipts to working expenses and maintenance, and to the paying of interest on debt or to paying off the debt (*h*). But in a later case the House of Lords held that quarter sessions were not prohibited from making an allowance for tenants' profits where the undertaking by their special Act was not prohibited from making profit, but the profit was appropriated to specific purposes (*i*). As it was expressed by Lord DUNEDIN (*k*): "Sterility in earning profits is one thing, sterility in disposing of profits is another. The former affects the value: the latter does not." [478]

Woodlands.—Land used for a plantation or a wood, or for the growth of saleable underwood is now within the definition of "agricultural land" in the R. & V. (Apportionment) Act, 1928 (*l*), and as such is no longer rateable (*m*). If the land, however, is occupied together with a house as a park, gardens (other than cottage gardens (*n*), market gardens or allotment gardens), pleasure grounds, or land kept or preserved mainly or exclusively for sport or recreation, it is not agricultural land within the definition, and is rateable as before the passing of the Act.

"Land used for a plantation or a wood or for the growth of saleable underwood, and not subject to any right of common," was made rateable by the Rating Act, 1874, and the method of valuation is prescribed (*o*). The relevant sections of the Act of 1874 are repealed by the L.G.A., 1929 (*p*), but only as respects agricultural land. Woodlands, therefore, which are excluded from the definition of agricultural land by reason of the exceptions stated, will continue to be assessable in the manner provided in the Act of 1874.

Difficulty arises in certain cases in determining when woodlands and other lands of the kind cease to be agricultural under the exceptions named. In a tax case it has been held that a home farm worked by a bailiff for the landowner was not a park (*q*); and in another case, that

(*e*) *Dewsbury Waterworks Board v. Penistone Union* (1886), 17 Q. B. D. 384; see Lord Esher, M.R., at p. 387; 38 Digest 547, 902. See *Metropolitan Water Board v. St. Marylebone Assessment Committee*, [1923] 1 K. B. 86; 38 Digest 547, 903.

(*f*) *Lanarkshire Assessor v. Lanarkshire County Council*, [1933] S. C. 355; Digest (Supp.).

(*g*) *Denny and Dumface Magistrates v. Assessor for Stirlingshire*, [1933] S. C. 338; Digest (Supp.).

(*h*) *Mersey Docks v. Liverpool Overseers* (1873), L. R. 9 Q. B. 84; 38 J. P. 21; 38 Digest 563, 1016.

(*i*) *Port of London Authority v. Orsett Union*, [1920] A. C. 273; 84 J. P. 69; 38 Digest 563, 1017.

(*k*) *Ibid.*, at p. 299.

(*l*) S. 2 (2); 14 Halsbury's Statutes 714.

(*m*) L.G.A., 1929, s. 67; 10 Halsbury's Statutes 927.

(*n*) Cottage garden here means a garden attached to a house occupied as a dwelling by a person of the labouring classes; R. & V. (Apportionment) Act, 1928, s. 2 (2), *supra*.

(*o*) Ss. 3 (1), 4; 14 Halsbury's Statutes 586.

(*p*) S. 137 and Sched. XII., Part V.; 10 Halsbury's Statutes 974, 1016.

(*q*) *Huish Overseers and Clinton (Lord) v. Barnstaple Surveyor of Taxes* (1897), 61 J. P. 487, and see *R. v. Bradford*, [1908] 1 K. B. 365; 26 Digest 356, 819.

the word "park" as used in sect. 10 of the Settled Land Act, 1890, was not confined to an ancient legal park in its technical sense, but included an ordinary private park, and that there need not be deer in it (*r*). At quarter sessions it was held that lands adjacent to Lowther Castle were agricultural land and were not occupied together with the castle as a park. They were, therefore, entitled to be derated. There were deer on the land, but it was contended they were tame deer, not shot for sport, and were treated in the same way as the cattle (*s*).

As to the method of valuation, it has been held that woodlands were correctly assessed at their value if occupied in their natural and unimproved state, and that it was not permissible to consider what a tenant would give if the land were improved (*t*). Also that a right of sporting was properly taken into account in estimating the value of the land in its natural and unimproved state (*u*).

If the right of sporting is severed from the occupation of the land, and is rateable, it will be rateable at its true value, and not under sect. 4 of the Rating Act, 1874 (*a*). Woodlands kept or preserved mainly or exclusively for purposes of sport, cease to be "agricultural" (*b*). [479]

(*r*) *Pease v. Courtney*, [1904] 2 Ch. 503; 40 Digest 746, 2766.

(*s*) *Trustees of the Earl of Lonsdale v. Westmorland (North) Assessment Committee and West Ward Rating Authority*, Westmorland Quarter Sessions, April 25, 1935, 22 Rat. Inc. Tax. Rep., 258.

(*t*) *Westmorland (Earl) v. Southwick and Oundle* (1877), 36 L. T. 108; 41 J. P. 231; 38 Digest 570, 1079.

(*u*) *Eyton v. Mold Overseers* (1880), 6 Q. B. D. 13; 38 Digest 572, 1092.

(*a*) 14 Halsbury's Statutes 586, see "Sporting Rights," *ante*.

(*b*) R. & V. (Apportionment) Act, 1928, s. 2 (2); 14 Halsbury's Statutes 714.

RATING OF WEEKLY TENANT

See RATING OF OWNERS.

RATIONE CLAUSURAE

See REPAIR OF ROADS.

RATIONE TENURAE

See REPAIR OF ROADS.

RATS AND MICE

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Introductory.—Rats and mice damage crops, stores of food, fabrics, furniture, buildings, electric cables and land itself, as when embankments are undermined. They also carry disease germs, and place a nervous strain on occupiers of rat-infested houses.

The Rats and Mice (Destruction) Act, 1919 (*a*), affects all local authorities, whether or not they have administrative duties under the Act, because all local councils are placed under an obligation to deal with the infestation of their own property. [480]

The Principle of the Statute.—Occupiers of land or buildings (cellars, sewers, drains and culverts being included) and owners of unoccupied land are to take from time to time such steps as are necessary and reasonably practicable to destroy rats and mice, and to prevent infestation on or in such land and buildings. Failure to take such steps renders the occupier liable on summary conviction to a fine not exceeding five pounds (sect. 1).

A local authority is not empowered by the Act to destroy rats, at the public expense, on privately owned and occupied property.

Occupiers of rat-infested dwellings are often too poor to pay for rat-destruction or to execute repairs to prevent infestation. The local authority cannot under the provisions of the Act compel the owner of occupied premises to take ameliorative action. [481]

Local Authorities.—The enforcement of the Act (except in London) is the duty of the councils of administrative counties and county boroughs, and of port health authorities. County councils may by agreement delegate their powers and duties to borough and district councils (sect. 2). [482]

Administrative Procedure.—The local authority's authorised officers may enter land and buildings for the purpose of inspection and inquiry (sect. 5 (1)). A local authority may give instructions from time to time, by public notice, as to the most effective methods that can be adopted, individually and collectively, to destroy rats and mice (sect. 4). Where an occupier has failed to destroy rats and mice on his land, the authority may either (1) serve a notice on the occupier requiring him to take within a specified time such steps as are prescribed in the notice, or (2) after not less than twenty-four hours' notice, enter and take such steps as are necessary and reasonably practicable to destroy rats and

mice, or prevent infestation (sect. 5 (1)). Notices are to be served personally or by registered post (sect. 11). As far as possible, the local authority is to take or secure collective action (sect. 5 (2)). A local authority may prosecute summarily a person who has failed to discharge his statutory obligations under the Act (sect. 7). The maximum penalty if no notice has been served is £5; but is £20 when a formal notice has been served and disregarded (sect. 1). A person obstructing an officer in carrying out his duties, or failing to comply with his reasonable requirements is liable to a fine not exceeding £20 (sect. 5 (5)).

[483]

When a local authority enters in pursuance of a notice in that behalf, and executes works of destruction or prevention, any reasonable expenses so incurred may be recovered from the responsible person summarily as a civil debt (sect. 5 (1)), that is by complaint if necessary to a court of summary jurisdiction. The statute does not in terms enact that payment of these expenses must be enforced; and it may be that a local sanitary authority could justify the expenditure of public money on rat destruction on the land or premises of private residents, as expenditure for the promotion of public health. [484]

Some authorities confine themselves to carrying out their statutory duties, and have no staff wholly employed for the purpose. Others maintain an establishment of inspectors and rat-destroyers. Some give away poisons or supply traps, while others supply nothing but advice. The old practice of giving rewards for the production of the tails of dead rats has probably been abandoned almost everywhere. Where rat-catching operations are in progress, neighbouring residents whose houses may not be directly concerned should be warned of these operations as the rats may invade such premises. [485]

Powers in Default.—If a local authority fails to carry out its duties under the Act, the M. of A. may by order empower officers to enter upon land, and execute and enforce the provisions of the Act, at the expense of the defaulting authority. A statement by the Ministry that the local authority is in default, and a certificate of the expenses incurred are conclusive (sect. 3). [486]

Vessels.—The Act applies to vessels as if the vessel were land, and the master of the vessel is deemed to be the occupier. A local authority may serve a notice on the master requiring him to take such necessary and reasonably practical steps as are set out in the notice for preventing the escape of rats and mice from the ship. Failure to comply with a notice renders the master liable to a fine not exceeding £20. [487]

Technical Advice.—Local authorities may obtain technical advice from an officer of the M. of A. The Ministry has issued publications for officers of local authorities, notably Bulletin No. 30 ("Rats and how to exterminate them"); Advisory leaflet No. 49 ("The destruction of rats and mice"); and Form 618/T.R. ("How to kill rats"). The measures set out by the Ministry in the pamphlets include poisoning, especially with baits containing extract of red squill or barium carbonate; gassing with sulphur dioxide; various kinds of trap, including "varnish-traps"; and hunting with the aid of ferrets and dogs. The Ministry's leaflets give the names and addresses of firms prepared to supply poisons of various kinds. Some local authorities use hydrocyanic acid gas, generated from a cyanide in powder form, for killing rats in their runs or in the open air, especially at refuse dumps. This gas is dangerous to the operator unless precautions are taken, and

it is quite unsuitable for use in buildings. Local authorities may cause hydrocyanic acid to be used in the open air for killing rats, without being affected by regulations under the Hydrogen Cyanide (Fumigation) Act, 1937 (b).

The Ministry is prepared to lend cinematograph films for exhibition by authorities. The Ministry encourages local authorities to have a "Rat-week" in November each year. There are special efforts to make the provisions of the Act generally known and to secure specially active measures of extermination.

The supervision of the administration of the Act in port health districts and vessels is now undertaken by the M. of H., and not by the M. of A. (c). [488]

Expenses.—Expenses of administration are to be defrayed by county councils out of the general county fund; by port health authorities, as part of their general expenses; by P.H.A. authorities, as public health expenses (d). [489]

London.—By sect. 2 (1), the local authorities in London are the City Corporation as regards the city and (as port health authority) as regards the Port of London, and the metropolitan borough councils as regards their respective boroughs; but the L.C.C. is the exclusive authority as regards its sewers and sludge vessels. [490]

(b) 30 Halsbury's Statutes 708.

(c) The M. of H. (Rats and Mice Destruction, Transfer of Powers) Order, 1922; S.R. & O., 1922, No. 948.

(d) Rats and Mice (Destruction) Act, 1919, s. 2 (2); 13 Halsbury's Statutes 964.

READING ROOMS

See LIBRARIES.

RECOGNISANCES

See APPEALS TO THE COURTS; QUO WARRANTO; SUMMARY PROCEEDINGS.

RECONDITIONING OF HOUSES

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See also titles : HOUSING ;
HOUSING SUBSIDIES ;
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SLUM CLEARANCE.

Introduction.—This article deals with reconditioning of houses in rural districts, which is dealt with in the Housing (Rural Workers) Act, 1926 (a), Housing (Rural Workers) Amendment Act, 1931 (b), sects. 37 and 38 of the Housing Act, 1935 (c), and the Housing (Rural Workers) Amendment Act, 1938. The Acts of 1926, 1931 and 1938, together with sects. 37 and 38 of the Housing Act, 1935, may be cited as the Housing (Rural Workers) Acts, 1926 to 1938 (d), and these Acts are to be construed as one (e). In this article, the Housing (Rural Workers) Act, 1926, will be referred to as the Act of 1926. In addition to the powers contained in the above Acts, a R.D.C. is the local authority for the enforcement of Parts II. and III. of the Housing Act, 1936 (f), relating to insanitary houses and unhealthy areas, for details of which see titles SLUM CLEARANCE and INSANITARY HOUSES. [491]

The term "reconditioning" is not defined in the statutes. The Departmental Committee on Housing in 1933, in considering what further steps were necessary to secure the maintenance of a proper standard of fitness for human habitation in working-class houses which were not suitable for clearance or demolition under the Housing Act, 1930, defined the term as follows (g) :

-
- (a) 13 Halsbury's Statutes 1162.
 - (b) 24 Halsbury's Statutes 370.
 - (c) 28 Halsbury's Statutes 228, 229.
 - (d) Housing (Rural Workers) Amendment Act, 1938, s. 12 (3).
 - (e) *Ibid.*, s. 12 (2).
 - (f) 29 Halsbury's Statutes 566.
 - (g) Cmd. 4397, p. 8.

"Such works as are necessary to provide in each tenement or house of good structure a reasonable standard of comfort and convenience at a substantially lower cost than would be incurred by the demolition of such tenement or house and the provision of a new tenement or house."

In practice, the term "reconditioning" includes works of repair, improvement and addition, and in this title applies to houses in rural areas occupied by agricultural workers, which are not in all respects reasonably fit for human habitation, but are capable of being brought to a reasonable standard of fitness and accommodation by an expenditure less than that necessary for the erection of a new house. It is claimed by rural authorities that the reconditioning of agricultural cottages in accordance with the scheme laid down in the Act of 1926 provides a more satisfactory and economical method of improving the housing conditions of agricultural workers, and this view has been endorsed by the Departmental Committee on Local Expenditure in England and Wales (*h*), and by the Minister of Health (*i*).

Briefly, the Act of 1926 is designed to stimulate the improvement of rural cottages and to increase housing accommodation in rural areas, by giving financial assistance to owners in connection with works of reconditioning. [492]

Duty of Local Authority to Prepare Scheme.—Sect. 1 of the Act of 1926 (*k*), provides that a local authority may, and if required by the Minister of Health must, submit to him a scheme with respect to the reconstruction and improvement of houses or buildings within their area. After a scheme has been approved, the local authority may give assistance in manner provided by the Act in respect of any such works of reconstruction or improvement.

Every scheme must make provision for (a) specifying, by reference to the value, after the completion of the proposed works, of the dwellings in respect of which assistance under the Act is to be given, the cases in which such assistance may be given; (b) specifying the nature of the works in respect of which assistance may be given; and (c) specifying the period within which any such works must be completed. [493]

Operation of Scheme.—The provisions for the reconditioning of rural cottages are temporary; as originally introduced in 1926 they were to remain in force until October 1, 1931 (*l*). The date for the termination of the scheme was extended, however, until October 1, 1936 (*m*), then until June 24, 1938 (*n*), and by sect. 1 (1) of the Housing (Rural Workers) Amendment Act, 1938, until September 30, 1942. [494]

Local Authorities for the Administration of Scheme.—The council of the county or the council of the county borough is the local authority for the purposes of the Act of 1926, provided, however, that if the Minister of Health, owing to special circumstances (or as a result of an application by a county district council made prior to March 31, 1927), considers it desirable to do so, he may, after consultation with the county council concerned, declare the council of any county district

(*h*) Cmd. 4200, p. 60.

(*i*) Circular of M. of H. (No. 1335), dated May 22, 1933.

(*k*) 13 Halsbury's Statutes 1162.

(*l*) Housing (Rural Workers) Act, 1926, s. 2 (2) (c); 13 Halsbury's Statutes 1163.

(*m*) Housing (Rural Workers) Amendment Act, 1931, s. 1 (1); 24 Halsbury's Statutes 370.

(*n*) Housing Act, 1935, s. 37 (1); 28 Halsbury's Statutes 228.

within the county to be the local authority for the purposes of the Act, to the exclusion of the county council. The Minister may revoke any such declaration after further consultation with the county council (o).

Where the county council have retained their powers under the Act of 1926, they may make arrangements with any of the county district councils in their area for the latter to carry out, on behalf of the county council, any of the duties connected with the administration of the scheme, except (1) the approval or disapproval of applications for assistance; (2) the payment of any grant or loan, or instalment of a loan; or (3) the institution of legal proceedings in the event of a breach of any of the conditions governing the grant or loan (p). [495]

Nature of Work in Respect of which Assistance may be Given.—Assistance is not available to carry out ordinary repair or upkeep, except such as is incidental to or connected with the work of reconditioning; but the following may be regarded as typical examples of the kind of works for which assistance may be given: structural alterations, demolition and rebuilding of walls, chimneys, or other parts; raising of roofs; renewing of roof timbers; provision of rain-water gutters and pipes; provision of damp-proof courses; enlargement or provision of windows; improvement of existing accommodation by providing more adequate air space or headroom; construction of bedrooms, a scullery or washhouse, food larder, fuel store, etc.; provision or improvement of water supply, drainage or sanitary conveniences, and other like works. [496]

Assistance by Local Authorities.—Assistance may be given by way of grant or by way of loan, or partly by way of grant and partly by way of loan (q). Assistance is not available in the following circumstances (r): (a) where the estimated value of the house, after the completion of the proposed works, exceeds £400 (s); (b) where the estimated cost of the proposed works is less than £50 per dwelling; except in the case of works for the improvement of two or more dwellings (such as the provision of water supply, drainage, etc.), when assistance may be given if the total cost of the works (including the cost of any works to be executed in connection with the joint works, but separately in respect of the several dwellings or any of them), is not less than £100; (c) where the application for assistance is received after September 30, 1942 (t); (d) where the interest of the applicant in the house or building is a leasehold interest only, except in cases where not less than thirty years remains unexpired at the date of the application; (e) unless the local authority are satisfied that the dwelling-house will, after the completion of the proposed works, be in all respects fit for habitation (u) by persons of the working-classes.

A local authority may refuse assistance on any grounds which seem to them sufficient, and must refuse it if it appears to them that the house or building, in respect of which the works are to be executed,

(o) Housing (Rural Workers) Act, 1926, s. 5 (1); 13 Halsbury's Statutes 1168.

(p) *Ibid.*, s. 5 (2); *ibid.*

(q) *Ibid.*, s. 2 (1); *ibid.*, 1163.

(r) *Ibid.*, s. 2 (2); *ibid.*

(s) In arriving at the value of any dwelling-house any carving or panelling must not be taken into account (*ibid.*, s. 2 (2) (a); *ibid.*)

(t) Housing (Rural Workers) Amendment Act, 1938, s. 1 (1).

(u) See Housing Act, 1936, s. 188 (4); 29 Halsbury's Statutes 683; and see titles INSANITARY HOUSES and SLUM CLEARANCE.

cannot, by reason of the narrowness, closeness, or bad arrangement or condition of the streets or buildings in the immediate neighbourhood thereof, be converted into a dwelling or dwellings, which is or are in all respects satisfactory, or, in the case of a house or building to which any historic, architectural, or artistic interest attaches, that the proposed works would destroy or seriously diminish that interest (v). [497]

Where a dwelling, in respect of which assistance by way of grant was given on an application received before August 2, 1935, is overcrowded within the meaning of Part IV. of the Housing Act, 1936, and an application is made for further assistance for works to abate overcrowding, the authority may give such assistance by way of grant in excess of the amount which would otherwise be permissible. The further assistance, however, must not exceed two-thirds of the estimated cost of the proposed works or £100, whichever is the less, and the total amount of the grants in respect of the dwelling must not exceed £150. The authority must be satisfied that on the completion of the works, the dwelling will cease to be overcrowded (x). [498]

Assistance to Local Authorities.—Where a local authority under the Act of 1926, carry out works on property belonging to themselves, they are entitled to the same grant as a private owner might have obtained if he had carried out the works (a). Under sect. 38 (1) of the Housing Act, 1935 (b), the like assistance may be given under the Act of 1926, upon the application of a local authority, not being the local authority for the purposes of the Acts of 1926 and 1931, as may be given to a private owner. In such a case, the local authority owning the house would proceed in the same way as a private person. Sect. 72 of the Housing Act, 1936 (c), authorises a local authority to acquire compulsorily houses or other buildings which may be made suitable as dwelling-houses for the working classes, and the authority must proceed forthwith to secure the alteration, enlargement, repair or improvement of the houses or buildings, either directly or by leasing or selling the property on conditions which will secure such work being carried out (d). This procedure is available to all local authorities, and is of particular value to rural authorities, who may buy and recondition suitable property, and obtain assistance as if the property belonged to a private person. [499]

Provisions with Respect to Grants.—Where assistance is given by way of grant, it may take one of two forms : (1) the grant may be made by way of a lump sum payment, to be made either after the completion of the works or partly in instalments from time to time as the works progress, and as to the balance after the completion of the works, so, however, that where the payment is to be made partly in instalments, the aggregate of the instalments paid shall not at any time before the completion of the works exceed one-half of the aggregate cost of the works executed up to that time ; (2) the grant may be made by the provision, during a period not exceeding twenty years, of any part of any periodical sums which may be payable to any persons by way of

(v) Housing (Rural Workers) Act, 1926, s. 2 (3) ; 13 Halsbury's Statutes 1163.

(x) Housing (Rural Workers) Amendment Act, 1938, s. 9 (1).

(a) Housing Act, 1935, s. 38 (2) ; 28 Halsbury's Statutes 229 ; and see also, *post*, p. 227, as to Government contributions towards expenses of local authorities.

(b) 28 Halsbury's Statutes 229.

(c) 29 Halsbury's Statutes 619.

(d) Housing Act, 1936, s. 79 (4) ; 29 Halsbury's Statutes 624.

interest on, or repayment of, advances made by those persons for the purposes of the works. The total amount of the grant must not exceed two-thirds of the estimated cost of the works in respect of which the grant is to be made, or the sum of £100 in respect of each dwelling. Where the grant is made by way of periodical payments over a period of years, the amount of the grant must be taken to be equal to the capital value of the sums to be so provided, calculated as on the date of the completion of the works (e). In the event of a breach of any of the conditions (f) applicable to a dwelling in respect of which a grant has been made, any sum already paid, together with compound interest calculated at the prescribed rate (g), and with yearly rests, shall, on being demanded by the local authority, forthwith become payable by the owner (h) for the time being of the dwelling; and the local authority must cease to make any further payments. If the local authority are satisfied that the breach of the conditions was not due to the act, default or connivance of the owner, they may, with the consent of the Minister of Health, and subject to such conditions, if any, as he may impose, waive the liability of the owner to make repayment as provided above. In the case of a continuing breach they may, with the like consent and subject to such conditions as aforesaid, suspend the enforcement of the above provisions for such period as may be necessary to enable the owner to remedy the breach (i). [500]

Conditions attaching to a dwelling in respect of which a grant has been made.—Sect. 3 of the Act of 1926 (k) contains conditions which attach to a dwelling in respect of which assistance has been given by way of a grant. These conditions apply for a period of twenty years after the dwelling first becomes fit for occupation after the completion of the works and are, so long as they continue to have effect, deemed to be part of the terms of any lease, agreement for a lease, or tenancy of the dwelling and are enforceable accordingly. The conditions are as follows: (a) the dwelling must not be occupied by anyone (whether as owner or tenant) with an income exceeding that ordinarily enjoyed by an agricultural worker, provided that in the case of such a person subsequently ceasing to be a person in receipt of such an income, a contravention of this condition does not occur if the local authority have assented to such person continuing in occupation of the dwelling notwithstanding the changed circumstances; (b) the rent payable by the occupier must not be increased beyond the normal agricultural rent (l) by a sum equal to

(e) Housing (Rural Workers) Act, 1926, s. 2 (4) (a), (b); 13 Halsbury's Statutes 1164; as amended by s. 2 (1) of the Housing (Rural Workers) Amendment Act, 1938.

(f) See Housing (Rural Workers) Act, 1926, s. 3, as to conditions, *infra*.

(g) "Prescribed rate" means prescribed by the Minister of Health with the approval of the Treasury (*ibid.*, s. 9 (3); 13 Halsbury's Statutes 1170).

(h) "Owner" means any person who is for the time being receiving, or who if the dwelling were let at a rack-rent would receive, the rack-rent of the dwelling: provided that, if in any case the person who by virtue of the foregoing definition would be the owner of a dwelling is a person himself liable to pay a rack-rent in respect of the dwelling or of any property comprising the dwelling to a superior landlord, that superior landlord and not the person aforesaid shall be deemed to be the owner of the dwelling for the purposes of this Act (*ibid.*, s. 9 (3); *ibid.*).

(i) *Ibid.*, s. 2 (4) (c); *ibid.*, 1164.

(k) 13 Halsbury's Statutes 1165.

(l) *I.e.* (i) in the case of a dwelling which had not, previously to the execution of the works, been, or which was not, within the period of five years immediately preceding the execution of the works, separately let as such, the rent which the local authority determine to be the rent normally paid by agricultural workers in the district, or, if it appears to the local authority that the number of agricultural workers in the district is insufficient for the determination of any sum as being such

more than four per cent. (*m*) of the owner's share of the estimated cost of the work executed ; (c) no fine, premium or other like sum may be taken in addition to the rent ; (d) the owner of the dwelling must give to the local authority as required, a certificate to the effect that conditions (a), (b) and (c), *supra*, are being complied with, and the tenant of the dwelling must, on being so required by the owner in writing, supply him with information to enable the owner to comply with this condition ; (e) premiums or other similar payments must not be charged upon changes in tenancy. [501]

An additional condition attaches to grants made after June 24th, 1938, namely that all reasonable steps shall be taken to secure the maintenance of the dwelling so as to be in all respects fit for habitation by persons of the working classes (*mm*).

With the approval of the Minister of Health, the owner (*n*) may, at any time during the period of twenty years, pay to the local authority the amount of the grant, or of such instalments thereof as have been paid, together with compound interest calculated at the prescribed rate (*g*), and with yearly rests, and thereupon the conditions detailed above cease to have effect in relation to that dwelling (*o*). Capital money arising under the Settled Land Act, 1925 (*p*), may, subject to the provisions of sect. 73 of that Act, be applied in payment of any sum payable to the local authority under the above provisions (*q*).

The conditions attaching to a dwelling in respect of which assistance has been given by way of a grant as detailed above, must be registered in the prescribed manner by the proper officer as a local land charge (*r*). [502]

Upon the application of a local authority, the county court may grant an injunction restraining the breach or apprehended breach, of any condition detailed above, other than that detailed under (d), *supra* ; or may make an order directing payment to the authority of

rent as aforesaid, the rent normally paid by persons of substantially the same economic condition in the district ; and (ii.) in the case of a dwelling which was separately let as such at any time within the said period of five years, the average amount determined by the local authority to have been payable by way of rent per week during the period of the letting ; provided that if in the case of a dwelling to which para. (ii.) applies the amount of the normal agricultural rent payable in respect thereof is by reason of a general increase of rent in the district less than the rent normally paid by agricultural workers in the district or, if it appears to the local authority that the number of agricultural workers in the district is insufficient for the determination of any sum as being such rent as aforesaid, then the rent normally paid by persons of substantially the same economic condition in the district, shall be taken to be the normal agricultural rent (Housing (Rural Workers) Act, 1926, s. 3 (1) (b) ; 13 Halsbury's Statutes 1165, as amended by s. 4 of the Housing (Rural Workers) Amendment Act, 1938).

(*m*) Increased from 3 per cent. to 4 per cent. by the Housing Act, 1935, s. 37 (4) ; 28 Halsbury's Statutes 229 ; but this increase does not apply where the reconditioning was completed by January 1, 1935. But where further assistance has been given for the same dwelling, the rent payable must not exceed the old rent plus a percentage of the amount by which the estimated cost of the works exceeds the amount of the further assistance. If the works were completed before January 1, 1935, the percentage is 3 per cent. ; if afterwards, 4 per cent. No fine, premium or other like sum shall be taken in addition to the rent (Housing (Rural Workers) Amendment Act, 1938, s. 6).

(*mm*) Housing (Rural Workers) Amendment Act, 1938, s. 5 (1).

(*n*) Includes a mortgagee entitled to exercise his powers of sale (Housing (Rural Workers) Act, 1926, s. 3 (2) ; 13 Halsbury's Statutes 1166).

(*o*) *Ibid.*, s. 3 (1) ; *ibid.*, 1165.

(*p*) 17 Halsbury's Statutes 906.

(*q*) Housing (Rural Workers) Act, 1926, s. 3 (3) ; 13 Halsbury's Statutes 1167.

(*r*) *Ibid.*, s. 3 (4) ; *ibid.* ; and see also title LOCAL LAND CHARGES, Vol. VIII., p. 133.

any sum which has become payable by reason of the breach of any of the conditions applying to a dwelling (s). [503]

Provisions with Respect to Loans.—Sect. 2 (4) of the Act of 1926 (t) provides as follows : (a) the loan, together with interest thereon, at a rate one-quarter per cent. in excess of the rate of interest which, one month before the date on which the terms of the loan are settled, was the rate fixed by the Treasury under sect. 1 of the Public Works Loans Act, 1897, in respect of loans to local authorities advanced out of the Local Loans Fund for the purpose of Part III. of the Housing Act, 1925 (u), must be secured by a mortgage of the dwelling ; (b) the principal must not exceed 90 per cent. of the value which it is estimated the security will bear after completion of the works ; (c) the mortgage deed may provide for repayment either by instalments of principal, or by an annuity of principal and interest combined, provided that in the event of any of the conditions subject to which the advance was made not being complied with, the balance for the time being unpaid must be repaid on demand by the local authority ; (d) the loan may be made by instalments from time to time as the works proceed, but the total of the loan must not at any time before completion of the works exceed 50 per cent. of the value for the time being of the security ; and (e) the loan must not be made until after a valuation has been made on behalf of the local authority.

In the case of two or more dwellings belonging to the same person, loans in respect of such dwellings may be secured by a single mortgage charged on all the dwellings jointly, in which case the several loans are to be considered as constituting a single loan and the expression " dwelling " as including a reference to the several dwellings in respect of which the loans are made. A loan may also be secured on lands of which the site of the dwelling in respect of which the loan is made forms part, provided that a local authority may not lend more than the sum which they are authorised to lend had the loan been secured only on the dwelling. [504]

Applications for Assistance.—Applicants for assistance must supply the local authority with full particulars of the houses or buildings in respect of which a grant or loan is required. A detailed statement of the proposed works must be furnished, including plans and specifications, together with an estimate of the cost of the works, which must be approved by an officer of the local authority authorised for the purpose. If the local authority approve the application, they must issue a certificate of approval setting forth the terms and conditions upon which the assistance will be given. Upon completion of the works, or, in the case of a loan, such portion thereof as the applicant considers will entitle him to payment of an instalment of the loan, the applicant must produce the certificate to the local authority and satisfy them that the works or part thereof have been executed in accordance with the terms and conditions of the certificate. Unless they are satisfied as aforesaid, the local authority are not liable to make any grant or loan (a). [505]

(s) S. 3 (5) ; 13 Halsbury's Statutes 1167.

(t) 13 Halsbury's Statutes 1164.

(u) Rate of interest was amended by Housing Act, 1935, s. 37 (3) ; 28 Halsbury's Statutes 229. For Part III. of the Housing Act, 1925, see now Part V. of the Housing Act, 1936 ; 29 Halsbury's Statutes 619.

(a) Housing (Rural Workers) Act, 1926, s. 2 (6) ; 13 Halsbury's Statutes 1165, 1170.

Government Contributions towards Expenses of Local Authorities.—

Exchequer contributions are payable to local authorities under sect. 4 of the Act of 1926 (b), as amended by sects. 37 and 38 of the Housing Act, 1935 (c), and are payable subject to such conditions as to records, certificates, audit or otherwise as the Minister of Health, with the approval of the Treasury, may impose. Contributions are payable by way of annual payments for a period of twenty years from the completion of the works, and are equal to one-half of the estimated average annual payments falling to be made by the local authority in respect of the charges on account of loans raised by the authority for the purposes of grants made under the Act, or which would have fallen to be so made if the sums expended by the local authority on account of the grant had been raised by means of loans. In the case of buildings belonging to a local authority, in respect of which they would have been entitled to make grants under the Act of 1926 if belonging to a private person, the authority may make application to the Minister of Health, supplying all necessary information and details, and he may undertake to make the same contributions to the local authority as he might have made if the buildings belonged to a private person. The conditions laid down in sect. 3 of the Act of 1926 (d), except those relating to the giving of certificates or the repayment of grants to the authority, have effect, subject to the provisions of Part IV. of the Housing Act, 1935 (e), as if a grant had been made equal to twice the capital value of the contribution (f). [506]

Where any of the conditions applicable to the dwelling are not complied with, the local authority are liable to repay to the Minister a sum equal to the contributions already made by him, together with compound interest, calculated at the prescribed rate and with yearly rests. Any sum so due is recoverable as a debt due to the Crown (g). This liability does not apply where the local authority have waived the liability of the owner for repayment in accordance with sect. 2 (4) of the Act of 1926 (h); and in cases where the local authority show to the satisfaction of the Minister of Health that they have taken all practicable steps to recover from the owner the sum repayable, but have failed to recover the whole or part thereof, the Minister may remit an amount equal to not more than one-half of the sum not recovered.

Where the Minister approves of the repayment of a grant in accordance with sect. 3 (1) of the Act of 1926 (i), he is not liable to make any further contributions in respect of the dwelling concerned, and the local authority must repay to the Minister a sum equal to the amount already contributed to the authority together with interest. [507]

In accordance with sect. 128 of the Housing Act, 1936 (k), every local authority must keep a housing revenue account containing particulars of income and expenditure connected with *inter alia*, dwellings in respect of which (1) the authority have received assistance under sect. 1 of the Act of 1926 (l), or (2) the Minister has undertaken to pay contributions

(b) 13 Halsbury's Statutes 1167.

(c) 28 Halsbury's Statutes 228, 229.

(d) See *ante*, p. 224.

(e) See now Housing Act, 1936, s. 85; 29 Halsbury's Statutes 627.

(f) Housing Act, 1935, s. 38 (2); 28 Halsbury's Statutes 229.

(g) Housing (Rural Workers) Act, 1926, s. 4 (3); 13 Halsbury's Statutes 1167.

(h) See *ante*, p. 224.

(i) See *ante*, p. 225.

(k) 29 Halsbury's Statutes 654.

(l) See *ante*, p. 221.

under sub-sect. (2A) of sect. 4 of the same Act (*m*). A contribution received by a local authority under sub-sect. (2A), *supra*, is an "Exchequer contribution" within the meaning of sect. 188 (1) of the Housing Act, 1936 (*n*), and must be credited to the housing revenue account, and similarly the local authority's contributions out of the general rate fund (*o*) must also be credited to the same account (*p*). The loan charges must be debited to that account (*q*). [508]

Sect. 85 of the Housing Act, 1936 (*r*), contains conditions applicable to houses in respect of which a local authority are required to keep a housing revenue account, and sub-sect. (8) of that section provides that the conditions contained in sect. 3 of the Act of 1926 (*s*), shall not have effect in relation to any dwelling to which the requirements of sect. 85, *supra*, apply. This means that so long as a local authority are required to maintain a housing revenue account in respect of a dwelling-house, such house is subject to the conditions contained in sect. 85, *supra*, and the conditions in sect. 3 of the Act of 1926 do not apply to that dwelling-house. [509]

Contributions by Local Authority.—Where the Minister of Health has undertaken to make a contribution to a local authority in respect of a dwelling belonging to that authority in accordance with sub-sect. (2A) of sect. 4 of the Act of 1926 (*t*), the local authority must contribute out of the general rate fund a sum similar to the Minister's contribution and payable for a similar period (*u*). [510]

Expenses of Local Authority.—Any expenses incurred by a county council in the execution of the Act of 1926 are to be defrayed as expenses for general county purposes, but where the council of a county district are the local authority under the Act, the expenses of the county council (other than expenses in connection with assistance given by the county council in respect of a house or building situated in the county district) must be treated as special county purposes restricted to such parts of the county as are not comprised in such county district (*x*). Expenses of county borough councils are met out of the general rate fund (*a*). [511]

Borrowing Powers of Local Authority.—Subject to the approval of the Minister of Health, a local authority may borrow any sums required for the purpose of making grants or loans under the Act of 1926, and the Public Works Loan Commissioners are empowered to lend money to a local authority for that purpose (*b*). As to the powers of a local authority regarding borrowing, see L.G.A., 1933, ss. 195, 196 (*c*), and the title BORROWING, Vol. II., pp. 199 *et seq.* [512]

(*m*) See *ante*, p. 227.

(*n*) 29 Halsbury's Statutes 680.

(*o*) See paragraph "Contributions by local authority," *infra*.

(*p*) Housing Act, 1936, s. 129 (1); 29 Halsbury's Statutes 654.

(*q*) *Ibid.*, s. 129 (1) (i); *ibid.*

(*r*) 29 Halsbury's Statutes 627.

(*s*) See *ante*, p. 224.

(*t*) See *ante*, p. 227.

(*u*) Housing Act, 1935, s. 39; 28 Halsbury's Statutes 230.

(*x*) Housing (Rural Workers) Act, 1926, s. 5 (3); 13 Halsbury's Statutes 1168; and see L.G.A., 1933, ss. 180, 181; 26 Halsbury's Statutes 404.

(*a*) *Ibid.*, s. 185.

(*b*) S. 5 (4); 13 Halsbury's Statutes 1169.

(*c*) 26 Halsbury's Statutes 412, 413.

London.—The Housing (Rural Workers) Acts, 1926, 1931 and 1938, do not apply to London (*d*). [513]

(*d*) Housing (Rural Workers) Act, 1926, s. 9 (2) ; 13 Halsbury's Statutes 1169 ; Housing (Rural Workers) Amendment Act, 1938, s. 12 (5).

RECONSTRUCTION SCHEME

See RECONDITIONING OF HOUSES.

RECORDER

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See also titles : CEREMONIES ;
QUARTER SESSIONS BOROUGHES.

Definition, Qualification and Appointment.—A recorder is the sole judge of a borough court of quarter sessions, and his jurisdiction (*a*) is identical with that of the court of quarter sessions of a county except that he has no jurisdiction to hear appeals under the Licensing Acts. The qualification for appointment as a recorder is five years' standing as a barrister (*b*), and by custom a member of the particular circuit or circuits concerned with the borough is selected (*c*). He is appointed by the Crown (*b*) on the recommendation of the Home Secretary and he holds office during his good behaviour. His salary is paid by the borough, but is fixed by the Crown at a sum not more than the salary declared in the petition (*d*) by the borough for a separate court of quarter sessions. The recorder may not serve in Parliament or be an alderman, councillor or stipendiary magistrate for the borough of which he is recorder, but he may sit in Parliament for any other constituency (*b*), and he may hold more than one recordership, but in practice this is rare. He is *ex officio* a justice of the peace for the borough, but before acting

(*a*) For this jurisdiction, see title QUARTER SESSIONS BOROUGHES ; and see 10 Halsbury's Statutes 630.

(*b*) Municipal Corporations Act, 1882, s. 163 ; *ibid.*, 629.

(*c*) Annual Statement of the Bar Council, 1932, p. 6.

(*d*) For the contents of such petitions, see title QUARTER SESSIONS BOROUGHES, p. 110, *ante*. The salary may be increased by resolution of the council approved by the Home Secretary.

as recorder or as a justice of the peace he must take the oath of allegiance and the judicial oath, and he must make the declaration required of a borough justice. [514]

Status, Powers and Duties.—A recorder sits alone for all judicial purposes, and at all civic functions he ranks next to the mayor in order of precedence. He is also the judge of the borough court (*e*), if any exists, unless that court is regulated by local Act or unless at the time that the Municipal Corporations Act, 1882, was passed a barrister of five years' standing was acting as judge or assessor of the court in which case the borough appoints the judge.

A recorder fixes the dates of his own sessions which must be at the least once in every quarter or more often if he thinks fit or the Secretary of State directs (*f*).

If through illness or unavoidable absence the recorder is unable to sit himself, he may appoint a deputy who must be a barrister of at least five years' standing, and the appointment ceases with the end of the sessions for which the deputy is appointed. The acts of the deputy are not invalidated if the absence of the recorder was in fact not unavoidable (*g*).

The recorder or his deputy may on a resolution giving the necessary authority passed by the council and certified by the mayor, two aldermen or the town clerk order the formation of a second court and appoint an assistant recorder to hold it if it appears to the recorder or deputy that the sessions will last more than three days.

Where the sessions are likely to last more than three days, the recorder may appoint an assistant recorder who must also be a barrister of five years' standing who has the same powers and jurisdiction; but these continue only during such time as the recorder or deputy recorder is actually sitting in quarter sessions except that he may finish the hearing of a case where the prisoner before him has pleaded to the charges, and may sentence a prisoner already tried before him. The recorder may direct the assistant recorder to adjourn his court if he thinks a second court is no longer required (*h*). [515]

London.—See title CITY OF LONDON, Vol. III., p. 183.

(*e*) For a full description of existing borough courts, see 8 Halsbury's Statutes (2nd ed.) 669 *et seq.*

(*f*) Municipal Corporations Act, 1882, s. 165; 10 Halsbury's Statutes 630.

(*g*) *Ibid.*, s. 166; *ibid.*

(*h*) *Ibid.*, s. 168; *ibid.*, 631; and see Summary Jurisdiction (Appeals) Act, 1933, s. 7; 26 Halsbury's Statutes 553.

RECORDS AND DOCUMENTS

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See also titles : CUSTOS ROTULORUM ;
MINUTES ;
PARISH DOCUMENTS.

Deposit and Custody of Documents.—With regard to the custody of records (a) and documents of counties, the dual functions of county quarter sessions prior to 1889 have led to provision being made by various statutes as to the custody of, broadly speaking, the administrative and judicial records respectively. The records existing at the coming into operation of the L.G.A., 1888, of or in the custody of quarter sessions are, subject to any order of that court, to remain in the same custody in which they would have been if that Act had not passed, *i.e.* in the custody of the *custos rotulorum* or some person appointed by him (b). As regards records and documents generally coming into existence after the Act of 1888 commenced to operate, the position is now governed by the L.G. (Clerks) Act, 1931 (c), and the L.G.A., 1933. By sect. 5 (3) of the Act of 1931, it is provided that, without prejudice to the enactment contained in proviso (a) to sub-sect. (1) of sect. 64 of the L.G.A., 1888 (*i.e.* as to pre-1889 records), and to the power of the *custos rotulorum* to give directions as to records and documents of any county, the records and documents of every county and all other records and documents which, at the passing of the Act of 1931, were in the custody of the clerk of the peace and county council, shall, so far as they relate to the business of quarter sessions and to judicial business generally, be in the custody of the clerk of the peace (d). Sect. 279 (1) of the L.G.A., 1933 (e), provides that, without prejudice to the power of the *custos rotulorum* to give directions as to records and documents of any county, the records and documents of every county which at the commencement of that Act were in the custody of the clerk of the county council, and all future records and documents relating to the business of the county council shall be in the custody of the clerk

(a) There is no definition of "records" in the L.G.A., 1933, but the Public Record Office Act, 1838, s. 20 ; 8 Halsbury's Statutes 205, defines "records" as including "all rolls, records, writs, books, proceedings, decrees, bills, warrants, accounts, papers and documents whatsoever."

(b) L.G.A., 1888, s. 64 ; 10 Halsbury's Statutes 738 ; in practice these records were generally kept by the clerk of the peace as deputy *custos rotulorum*. As to the *custos rotulorum*, see that title.

(c) 24 Halsbury's Statutes 240.

(d) As to the clerk of the county council and the clerk of the peace, see those respective titles.

(e) 26 Halsbury's Statutes 453.

of the county council and they shall be kept as the county council direct. In practice the powers conferred by these two sections on the *custos rotulorum* would seldom require to be exercised, but an occasion for that officer to give directions might arise where, the offices of the clerk of the county council and clerk of the peace being held by different persons, it was desired to know which clerk should have the custody of certain documents. It would appear, however, that quarter sessions may, as regards pre-1889 records, make an order under sect. 64 of the Act of 1888 over-riding any directions of the *custos rotulorum*.

Subject to the directions of the county council or to an order of the county court, the clerk of the county council is required to destroy all documents relating to a county council election forwarded to him by the returning officer after he (the clerk) has retained them for six months (f).

The county council must provide such accommodation and rooms, and such furniture, books and other things as may from time to time be determined by the standing joint committee of quarter sessions and the county council to be necessary or proper for the convenient keeping of the records and documents of the quarter sessions and justices out of sessions, or of any committee thereof (g).

Sect. 83 of the L.G.A., 1888 (h), contains special provisions as to the custody of the then existing records of the counties of Sussex and Suffolk. [516]

With regard to boroughs (including county boroughs and cities that are counties), urban and rural districts, sect. 279 (2) of the L.G.A., 1933 (i), provides that, subject to any general directions which the council may give, the town clerk of a borough and the clerk of a district council shall have the charge and custody of, and be responsible for all charters, deeds, records and other documents belonging to the borough or to the council, as the case may be. The records of borough quarter sessions, however, should be kept by the clerk of the peace for the borough. There are provisions in regard to documents forwarded to the town clerk or to the clerk of the district council by the returning officer in relation to borough (sect. 29) (k) and district council elections (sect. 40) (l) similar to those referred to above in relation to county elections (m). The clerk to a R.D.C. has, in addition, like powers and duties in relation to documents forwarded to him by the returning officer in relation to parish council elections (sect. 54) (n).

As regards the custody of parochial documents, see title PARISH DOCUMENTS, Vol. X., p. 128. [517]

With regard to the deposit of maps, plans and other documents with the clerk of a local authority, sect. 280 (1) of the L.G.A., 1933 (o), provides that in any case in which a map, plan or other document of any description is deposited with the clerk of a local authority, or with

(f) L.G.A., 1933, Sched. II; 26 Halsbury's Statutes 474.

(g) L.G.A., 1888, s. 64 (3); 10 Halsbury's Statutes 738.

(h) 10 Halsbury's Statutes 753.

(i) 26 Halsbury's Statutes 453.

(k) *Ibid.*, 319.

(l) *Ibid.*, 325. See the Urban District Councillors' Election Rules, 1934 (S.R. & O., No. 545), and the Rural District Councillors' Election Rules, 1934 (S.R. & O., 1934, No. 546).

(m) The Act does not apply to London, except as expressly provided (s. 308).

(n) 26 Halsbury's Statutes 332. See the Parish Councillors' Election Rules, 1934 (S.R. & O., 1934, No. 1318).

(o) *Ibid.*, 453.

the chairman of a parish council or parish meeting pursuant to the standing orders of Parliament or to any enactment (including any enactment in the Act of 1933) or statutory order (*p*), the clerk or chairman is to receive and retain, and to make such endorsements, and give such acknowledgments in respect of such documents as may be directed by such standing orders, enactment or statutory order. Subject to any contrary provisions in any other enactment or statutory order, a person interested (*q*) in any such plan, etc., may at all reasonable hours inspect and make copies thereof or extracts therefrom on payment to the person having custody thereof of one shilling and of a further shilling for every hour during which such inspection continues after the first hour (*r*). The county council has now no power to prescribe fees for the custody of documents. Documents required by any enactment or statutory order to be deposited with the parish clerk of a rural parish must (i.) in the case of a parish having a separate parish council be deposited with the clerk of the council or, if there is no clerk, with the chairman of the council, and (ii.) in the case of a parish not having a separate parish council, with the chairman of the parish meeting. [518]

Inspection of Documents.—There are various statutory provisions enabling certain documents of, or deposited with, a local authority to be inspected (*s*).

Sect. 283 of the L.G.A., 1933 (*t*), further permits a local government elector: (a) to inspect the minutes of proceedings of a local authority (*u*) or parish meeting on payment of a fee not exceeding one shilling and to make copies thereof and extracts therefrom and to inspect and to make copies of, or extracts from an order for payment of money made by a local authority (*v*); (b) to inspect the abstract of accounts of a local authority or parish meeting and of the treasurer of such authority or meeting and any report of an auditor on such accounts; to make copies thereof or extracts therefrom; and to have copies of such abstract or report delivered to him on payment of a reasonable sum for each copy (so delivered).

A member of a local authority may further inspect the accounts of that authority and of the treasurer and make a copy thereof or extract therefrom. The freeman's roll of a borough is to be open to public inspection and the town clerk is to deliver copies thereof to any person on payment of a reasonable sum for each copy. [519]

(*p*) See, for example, the standing orders of Parliament requiring the deposit of plans, etc., in respect of private bills. The clerk of the county council or town clerk of a county borough with whom certain of such plans, etc., are deposited must seal up and retain one copy until called for by order of either House of Parliament. By the L.G.A., 1933, s. 101 (26 Halsbury's Statutes 360), all enactments and statutory orders, e.g. the Gas and Water Works Facilities Act, 1870; 8 Halsbury's Statutes 1254, relating to the deposit of plans and documents, other than those relating to judicial business, shall be construed as if the clerk of the county council were therein substituted for the clerk of the peace.

(*q*) This would appear to allow inspection by an agent of such person; see *R. v. Bedwellty U.D.C.*, *ex parte Price*, [1934] 1 K. B. 333; Digest (Supp.).

(*r*) Obstruction of such inspection is punishable with a fine of £5, and it would appear that the right of inspection may be enforced against a local authority by *mandamus*; see *R. v. Bedwellty U.D.C.*, *ex parte Price*, *ubi sup*.

(*s*) See, for example, Audit, Bye-Laws, the provisions relating to Rating and those referred to above in this article.

(*t*) 26 Halsbury's Statutes 461.

(*u*) *I.e.* the council of a county, borough, urban district, rural district or parish; s. 305.

(*v*) But not, *semble*, a parish meeting.

Any of the documents directed by sect. 283 of the Act of 1933 to be open to inspection must be so open at all reasonable hours and, except where otherwise expressly stated, without payment. A penalty not exceeding £5 is provided for any custodian of a document in the section mentioned who obstructs inspection or copying or refuses to give copies to any person entitled to inspect, copy or receive a copy and an order of *mandamus* (x) may also be granted to a person aggrieved if his motive is *bona fide*. Inspection or copying may, it would appear, be made or done by an agent on behalf of a person entitled to inspect or to copy (a). Minutes or reports of a committee of a local authority submitted to that authority for approval may be inspected by a local government elector under sect. 283 whether or not they have been approved (b).

A member of a local authority has a right at common law to see any public documents which the authority may have and, provided that his reason for wishing to see a document is *bona fide*, e.g. not mere idle curiosity or self-interest, and it deals with some matter with which he is concerned as a member, a *mandamus* will be granted for its production (c). [520]

Delivery of Publications to Certain Libraries.—Sect. 15 of the Copyright Act, 1911 (d), requires the publisher of every book published in the United Kingdom to deliver, at his own expense and within one month of publication, a copy of the book to the trustees of the British Museum and, if demand is made, to certain other named libraries. The expression "book" includes every part or division of a book, pamphlet, sheet of letterpress, sheet of music, map, plan, chart or table separately published (e). [521]

London.—Under sect. 83 (11) of the L.G.A., 1888 (f), the clerk of the peace for the County of London has charge of records and documents of quarter sessions and of the justices, and the clerk of the L.C.C. has charge of other documents of the county. Under sect. 64 (3) (g) the L.C.C. must provide accommodation for the records of quarter sessions and of the justices.

The clerk of the county council (in his capacities of returning officer and clerk of the county council) has charge of all documents relating to county council elections (see Ballot Act, 1872, Sched. I., Part II. r. 64(b), as applied by Municipal Corporations Act, 1882, sect. 58, and L.G.A., 1888, sect. 75 (h)). Documents relating to borough council

(x) The Administration of Justice (Miscellaneous Provisions) Act, 1933, s. 7, substitutes an order of *mandamus* for the writ of *mandamus*.

(a) See *R. v. Bedwellty U.D.C., ex parte Price*, [1934] 1 K. B. 333; 98 J. P. 25; Digest (Supp.).

(b) *Williams v. Manchester Corpn.* (1897), 13 T. L. R. 299; 33 Digest 55, 336.

(c) This right is that possessed by members of a corporation. See *R. v. Newcastle-upon-Tyne (Fraternity of Hostmen)* (1745), 2 Stra. 1223; 13 Digest 302, 336; *R. v. Southwold Corpn., ex parte Wrightson* (1907), 71 J. P. 351; 13 Digest 303, 346; *R. v. Hampstead Borough Council, ex parte Woodward* (1917), 81 J. P. 65; 13 Digest 302, 341. *R. v. Barnes Corpn., ex parte Conlan*, [1938] 3 All E. R. 226; Digest (Supp.).

(d) 3 Halsbury's Statutes 733, as amended by the Copyright (British Museum) Act, 1915; 3 Halsbury's Statutes 750.

(e) Copyright Act, 1911, s. 15 (7). The practice of the various local authorities in delivering their publications to the British Museum is not uniform; some, for example, deliver council minutes and reports of their officers, others send their abstract of accounts and educational publications. See also British Museum Act, 1932, s. 1; 25 Halsbury's Statutes 73; S.R. & O., 1935, No. 298.

(f) 10 Halsbury's Statutes 754.

(g) *Ibid.*, 738.

(h) 7 Halsbury's Statutes 448; 10 Halsbury's Statutes 593; *ibid.*, 746.

elections are kept by the town clerks of the boroughs (Ballot Act, 1872, Sched. I., r. 64(b), as applied by L.G.A., 1894, sects. 31, 48, and London Government Act, 1899, s. 2 (5) (i)).

Rules have been made by the L.C.C. under the Ballot Act, 1872, Sched. I., para. 42 (k), as altered and adapted by the Metropolitan Borough Councils Election Order, 1931 (S.R. & O., 1931, No. 22), with regard to the inspection of documents in the custody of returning officers at borough council elections. Rules have also been made by the L.C.C. under para. 42 of Sched. I. of the Act of 1872 (k), as applied by Municipal Corporations Act, 1882, and L.G.A., 1888, with regard to the inspection of documents relating to elections of county councillors in the custody of the clerk of the council.

The records of the L.C.C. and of bodies which have been superseded by the council are preserved in perpetuity. Some of these date back to the fourteenth century. The council has published transcripts of certain of the records. The records are all kept at the county hall.

As to the records of the City of London, see title CITY OF LONDON, Vol. III., p. 178. [522]

(i) 7 Halsbury's Statutes 448 ; 10 Halsbury's Statutes 798, 807 ; 11 Halsbury's Statutes 1226.

(k) 7 Halsbury's Statutes 445.

RECOVERY OF EXPENSES

See PRIVATE IMPROVEMENT EXPENSES.

RECOVERY OF POOR RELIEF

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See also titles : PUBLIC ASSISTANCE ;
RELIEVING OFFICER ;
SETTLEMENT AND REMOVAL.

General Outline.—A recipient of relief may be liable to repay the cost thereof under sect. 20 of the Poor Law Act, 1930 (*a*), in which case the period of recovery is limited to the relief granted during the previous twelve months; or under a definite agreement to repay the relief as a loan, in which case the period of limitation is six years as for a civil debt. There is no common law liability to repay (*b*).

Sect. 14 of the Poor Law Act, 1930 (*c*), provides that the father, grandfather, mother, grandmother, husband or child of a poor, old, blind, lame or impotent person or other poor person not able to work, if possessed of sufficient means, is liable to relieve and maintain that person. Liability is only to contribute towards the cost of the relief afforded, and there is no power to require liable relatives to take a person in receipt of relief into their own home (*d*). A brother is not liable to maintain his brother or sister (*e*). A grandchild is not liable for the maintenance of a grandparent (*f*).

The council of each county or county borough, as the public assistance

(*a*) 12 Halsbury's Statutes 980.

(*b*) *Pontypridd Union v. Drew*, [1927] 1 K. B. 214; 37 Digest 229, 214.

(*c*) 12 Halsbury's Statutes 976.

(*d*) *R. v. Jones* (1710), *Foley's Poor Laws* 3rd ed. 53; 37 Digest 235, 273; *R. v. Munday* (1719), *Fortes. Rep.* 303; 37 Digest 231, 233; *Tubb v. Harrison* (1790), 4 Term Rep. 303; 37 Digest 231, 233; *Tubb v. Harrison* (1790), 4 Term Rep. 118; 37 Digest 235, 264; *Cooper v. Martin* (1803), 4 East, 76; 37 Digest 235, 266; *R. v. Dempson* (1733), 2 Stra. 955; 37 Digest 235, 272; *R. v. Dunn* (1714), 1 Bott. 404; 37 Digest 235, 283.

(*e*) *R. v. Smith* (1826), 2 C. & P. 449; 15 Digest 865, 9491.

(*f*) *Maund v. Mason* (1874), L. R. 9 Q. B. 254; 37 Digest 232, 239.

authority, can enforce the liability of the relatives mentioned in sect. 14, by obtaining a maintenance order under sect. 19 (g). The council also has the power of recovering contributions towards the cost of maintenance of any illegitimate child under the Bastardy Laws Amendment Act, 1873 (h), and the Affiliation Orders Act, 1914 (i). [523]

Liability of Father. Legitimate Children.—A father is liable for the maintenance of his legitimate children (k). This liability continues even if the father has entered into a deed of separation from his wife and covenants to pay her a weekly sum for the maintenance of the children (l). There is similar liability if the wife has obtained a separation order (m).

The father may not give evidence to prove non-access to his divorced wife so as to negative the presumption of legitimacy (n).

Illegitimate Children.—A man is under no obligation to provide for his illegitimate child in the absence of an affiliation order (p). [525]

Wife's Children by Former Marriage.—A man who marries a woman having a child, whether legitimate or illegitimate, at the time of the marriage, is liable to maintain the child as part of his family and is chargeable for all relief granted to or on account of the child until the child attains the age of sixteen or until the death of the mother (q). [526]

Adoptive Children.—The adoptive parent is liable for the maintenance of a child adopted under the Adoption of Children Act, 1926. Upon the making of an adoption order the liability of the parent is extinguished but the liability of the grandparent is not affected (r). [527]

Liability of Mother.—A mother is liable for the maintenance of her children. The mother of an illegitimate child, so long as she is unmarried or a widow, is liable to maintain the child as part of her family until the child attains the age of sixteen (s). [528]

Liability of Grandparent.—A grandfather is liable for the maintenance of his grandchildren (t). He may be compelled to contribute towards the maintenance of his grandchildren, even although the father is living and partly able to maintain them. Justices have a similar discretion whether the father is living or dead (u). [529]

Liability of Children.—A child is liable for the maintenance of his parents (a). An illegitimate child, unless legitimated under the

(g) 12 Halsbury's Statutes 979.

(h) 2 Halsbury's Statutes 18.

(i) *Ibid.*, 21.

(k) Poor Law Act, 1930, ss. 14, 18; 12 Halsbury's Statutes 976.

(l) *Westminster Union v. Buckle* (1897), 61 J. P. 247; 37 Digest 231, 237.

(m) *Shaftesbury Union v. Brockway*, [1913] 1 K. B. 159; 37 Digest 359, 1614.

(n) *Nottingham Guardians v. Tomkinson* (1879), 4 C. P. D. 343; 3 Digest 366, 68.

(p) 2 Halsbury's (2nd edn.) 579.

(q) Poor Law Act, 1930, s. 14; 12 Halsbury's Statutes 976.

(r) Adoption of Children Act, 1926, s. 5; 9 Halsbury's Statutes 828.

(s) Poor Law Act, 1930, s. 14; 12 Halsbury's Statutes 976.

(t) *Ibid.*

(u) *R. v. Cornish* (1831), 2 B. & Ad. 498; 37 Digest 232, 241; *Bevan v. M'Mahon and Bevan* (1859), 28 L. J. (P. & M.) 127; 37 Digest 232, 243.

(a) Poor Law Act, 1930, s. 14; 12 Halsbury's Statutes 976.

Legitimacy Act, 1926, is not liable to maintain his parents (b). The marriage of their mother does not relieve the children by a former marriage of liability to maintain her whilst she is living with her husband (c). An order against a husband does not preclude an order being made against the son (d). [530]

Liability of Husband.—A man is liable for all relief given to or on account of his wife (e), but not where the wife has committed adultery which has not been condoned (f). The husband is liable if the wife left him owing to his ill-usage, notwithstanding his offer to take her back. The justices must decide whether the wife left for a good cause and was justified in refusing to return (g). [531]

Liability of Married Women.—A married woman having property is subject to all such liability for the maintenance of her husband, children and grandchildren, as her husband is liable for herself, children and grandchildren. She is liable for the maintenance of her parents as in the case of an unmarried woman (h). If she has no property she is not liable during her coverture (i). [532]

Maintenance Orders.—The council of any county or county borough, as the public assistance authority, may obtain orders of maintenance upon the relatives mentioned in sect. 14 of the Poor Law Act, 1930 (k), on their becoming chargeable by the receipt of relief (l).

A maintenance order may also be obtained in any case where a married woman requires relief without her husband or is chargeable in any institution as a person of unsound mind (l). The customary method of proving a marriage is by a certified copy of the entry in the marriage register, but if this is not available evidence of reputation may be accepted (m).

The question as to whether the person has ability to maintain is in the discretion of the justices (n).

Where a husband has conferred all his property on his second wife it was held that the justices might infer that he was of sufficient ability to maintain his son (o).

The order may be for a greater sum than was actually being received by way of relief, and the relief must be increased accordingly (p). [533]

(b) *Westminster (City) v. Gerrard* (1632), 2 Bulst. 346; 37 Digest 236, 294; *R. v. Maude* (1842), 11 L. J. (M. C.) 120; 37 Digest 362, 1640.

(c) *Arrowsmith v. Dickenson* (1887), 20 Q. B. D. 252; 37 Digest 231, 231.

(d) *Cole v. Brown*, [1907] 2 K. B. 301; 37 Digest 231, 232.

(e) Poor Law Act, 1930, s. 18; 12 Halsbury's Statutes 979.

(f) *Culley v. Charman* (1881), 7 Q. B. D. 89; 37 Digest 233, 256; *Mitchell v. Torrington Union* (1897), 76 L. T. 724; 37 Digest 234, 257.

(g) *Thomas v. Alsop* (1870), L. R. 5 Q. B. 151; 37 Digest 233, 251.

(h) Poor Law Act, 1930, s. 14 (4); 12 Halsbury's Statutes 977, as amended by the Law Reform (Married Women and Tortfeasors) Act, 1935, Sched. II; 28 Halsbury's Statutes 109.

(i) *Coleman v. Birmingham Overseers* (1881), 6 Q. B. D. 615; 37 Digest 232, 245.

(k) 12 Halsbury's Statutes 976.

(l) Poor Law Act, 1930, s. 19; 12 Halsbury's Statutes 979.

(m) *Elliott v. Toines Union* (1892), 57 J. P. 151; 27 Digest 69, 528.

(n) *R. v. Moore, ex parte Faunsby* (1902), 37 L. Jo. 159.

(o) *Coulson v. Davidson* (1906), 96 L. T. 20; 37 Digest 235, 274.

(p) *Dinning v. South Shields Union* (1884), 13 Q. B. D. 25; 37 Digest 234, 260.

Burial Expenses.—The cost of burying any person by or under the direction of the council is recoverable in like manner and from the same person as the cost of any relief, which would have been recoverable, if given to the persons when living (*q*). [534]

Enforcement of Maintenance Order.—Payments due under a maintenance order are recoverable as a civil debt (*r*).

Arrears of maintenance recoverable under an order are limited to those accrued due within six months (*s*).

Where a maintenance order has been made against a person who is liable for maintenance under the Poor Law Act, and he is residing in a part of the British Empire to which the Maintenance Orders (Facilities for Enforcement) Act, 1920 (*t*), applies, the order may be enforced by following the procedure prescribed by that Act. [535]

Soldiers.—A soldier of the regular forces is liable to contribute to the maintenance of his wife and of his children, and also of any bastard child of which he may be proved to be the father, to the same extent as if he were not a soldier (*u*). It is, however, extremely difficult to enforce an order if the husband is under 26 years of age, as a marriage allowance under the Army Acts is only payable if the soldier has reached that age. A copy of any maintenance order obtained against a soldier is to be sent to the appropriate Army authority in order that deduction may be made from the pay of the soldier towards the maintenance of his wife and children, but so that there shall be left to the soldier not less than one-fourth, or, if he is a warrant officer or a non-commissioned officer below the rank of sergeant, not less than one-third of his pay. A similar order may be made even although no maintenance order has been obtained under the Poor Law Act, 1930, if it appears to the satisfaction of the Army Council or officer deputed by them for the purpose that a soldier of the regular forces has deserted or left in destitute circumstances, without reasonable cause, his wife or any of his legitimate children under sixteen years of age.

Where a proceeding is instituted against a soldier of the regular forces for the purpose of enforcing against him any such liability, if at the date of the service of the process the soldier is quartered out of the petty sessional division in which the proceeding is instituted, the process is to be served on his commanding officer, and such service is not to be valid unless there be left therewith a sum of money of a sufficient amount to enable him to attend the hearing of the case and return to his quarters.

In any other case the process may be served either on the commanding officer or on the soldier, provided that where the process is served on the soldier, a copy thereof is to be sent by the court by which it is issued to the commanding officer.

No proceedings of this nature are to be valid against a soldier of the regular forces if his commanding officer certifies that he is under orders for service beyond the seas, and that in his opinion it will not be possible for the soldier to attend the hearing and return to his quarters in sufficient time to enable him to embark for such service.

Where arrears have accumulated in respect of sums adjudged

(*q*) Poor Law Act, 1930, s. 76 ; 12 Halsbury's Statutes 1006.

(*r*) *Re Gamble*, [1899] 1 Q. B. 305 ; 37 Digest 236, 239.

(*s*) Summary Jurisdiction Act, 1848, s. 11 ; 11 Halsbury's Statutes 278.

(*t*) 9 Halsbury's Statutes 409.

(*u*) Army Act, 1881, s. 145 ; 17 Halsbury's Statutes 209.

to be paid by any such order or if the person against whom the order was made was serving as a soldier of the regular forces, whether or not deductions in respect thereof have been made from his pay, then after he has ceased so to serve an order of committal shall not be made in respect of those arrears unless the court is satisfied that he is able, or has since he ceased so to serve been able, to pay the arrears or any part thereof and has failed to do so (a). [536]

Airmen.—An airman of the regular forces is liable to contribute to the maintenance of his wife and of his children, and also for the maintenance of any bastard child of which he may be proved to be the father, to the same extent as if he were not an airman (b). The procedure as to obtaining and enforcing an order is similar to that prescribed in relation to soldiers with the substitution of the Air Council for the Army Council. [537]

Seamen in the Navy.—A person subject to the Naval Discipline Act is liable to contribute to the maintenance of his wife and of his children, and also to the maintenance of any bastard child of which he may be proved to be the father, to the same extent as if he were not so subject (c).

The procedure for obtaining an order is similar to that prescribed in regard to soldiers, but the amounts to be deducted from a seaman's pay may not be at a higher rate than as follows :

- (i.) in the case of a chief mechanic, chief artificer, chief shipwright, or chief petty officer mechanic, or a warrant officer (Class II), a quartermaster-sergeant, a quartermaster-sergeant instructor, or a company sergeant-major in the Royal Marines—in respect of a wife or children four shillings a day and in respect of a bastard child three shillings a day ;
- (ii.) in the case of any other chief petty officer or petty officer or of any other non-commissioned officer not below the rank of sergeant in the Royal Marines, in respect of a wife or children three shillings a day and in respect of a bastard child two shillings a day ;
- (iii.) in the case of any other naval rating, or soldier in the Royal Marines, in respect of a wife or children two shillings a day and in respect of a bastard child one shilling and sixpence a day.

Where any arrears have accumulated in respect of sums adjudged to be paid by any such order whilst the person against whom the order was made was serving under the Act, whether or not deductions in respect thereof have been made from his pay, then after he has ceased so to serve an order of committal shall not be made in respect of those arrears unless the court is satisfied that he is able, or has, since he has ceased so to serve, been able to pay the arrears or any part thereof and has failed to do so. [538]

Merchant Seaman.—Whenever during the absence of any seaman on a voyage, his wife or any of his children or stepchildren becomes chargeable, the council granting the relief is to be reimbursed, out of the wages of the seaman earned during the voyage, to the extent of one-half of the wages if only one member of the family is chargeable, and two-thirds of the wages if two or more of such members are chargeable. Any advances made under an allotment note must be first

(a) Army Act, 1881, s. 145 (3) ; 17 Halsbury's Statutes 210.

(b) Air Force Act, 1917, s. 145 ; *ibid.*, 382.

(c) Naval Discipline Act, s. 98A ; *ibid.*, 84.

deducted (d). Notice must be served on the shipowner stating the proportion of the wages upon which it is intended to make a claim and requiring him to retain such proportion for a time to be named in the notice, not exceeding twenty-one days from the time of the seaman's return to his port of discharge. After the seaman's return he must be summoned to appear before a court of summary jurisdiction at which application must be made for reimbursement of the relief claimed or such lesser sum as the court in the circumstances think fit. If no order is made within the period mentioned the proportion of wages retained is to be paid to the seaman (e). [539]

Army and Navy Pensioners.—Where an army pensioner is being maintained in a public assistance institution the council may obtain payment of his pension. Where temporary relief is afforded to an army pensioner he may assign the next quarterly payment of his pension to the council to secure repayment of the relief advanced. When the wife or family of a pensioner becomes chargeable two or more justices having jurisdiction in the county or county borough may, on complaint by the council or relieving officer, direct that one-half of the next payment, if the wife or one child only is chargeable, or two-thirds if the wife and child or two or more children are chargeable shall be paid to the council. Such a payment may not be ordered to be made if the wife has committed adultery (f).

Each claim must be rendered to the appropriate Army Paymaster at least three weeks before the end of the quarter (g). Repayment of relief can only be claimed from the pension for the quarter succeeding that in respect to which such relief has been given, and no arrears can be charged against a pension which may accrue subsequently.

If any relief is granted to a navy pensioner or to any person whom he is liable to maintain, the Admiralty may, in their discretion, repay to the council, out of his pension, the amount of relief so advanced, not exceeding in any case where relief has been administered to his wife or one child only, the amount of one-half, or where such relief has been administered to two or more such children or to his wife and one or more such children the amount of two-thirds of his pension (h). [540]

Chelsea Pensioners.—If any Chelsea pensioner obtains poor law relief for himself or his family, or suffers his family to become chargeable, or if he obtains an advance on account of his pension from the council or any county or county borough, the army council may agree with such council for the repayment out of his pension of the relief so advanced or expended on his account, provided that such amount is calculated at rates not exceeding the ordinary rates for institutional inmates, and provided also that not more than the daily rate of pension is deducted in respect of each day for which relief has been administered. In any case where relief has been administered to his wife, or one child only, whom he is bound to maintain, the rate of deduction must not exceed one-half of the daily rate of his pension, or, where such relief has been administered to two or more such children, or to his wife and

(d) Merchant Shipping Act, 1894, s. 182; 18 Halsbury's Statutes 229.

(e) *Ibid.*, s. 183; *ibid.*, 229.

(f) Pensions Act, 1839; 17 Halsbury's Statutes 467.

(g) Pay Warrant, Financial Instructions, Army Acts (1910), par. 162.

(h) Naval and Marine Pay and Pension Act, 1865.

one or more such child or children, two-thirds of such daily rate (*i*). [541]

Police Pensioners.—Where any poor law relief is given to a pensioner or to anyone whom the pensioner is liable to maintain, the police authority may pay the whole or any part of the grant, or of the instalment thereof next due, to the authority giving the relief, and any sum so paid may be applied in repayment of any sums expended in such relief (*k*).

If the pensioner neglects to maintain any person whom the pensioner is liable to maintain, the police authority may in their discretion pay or apply the whole or any part of the grant to or for the benefit of that person (*l*). If the pensioner appears to the police authorities to be of unsound mind or otherwise incapacitated to act, the police authority may pay so much of the grant as they think fit to the institution or person having the care of the pensioner, but shall in such case pay the surplus (if any) for or towards the maintenance and benefit of the dependants (if any) of the pensioner except so far as the surplus may be otherwise applied for the benefit of the pensioner (*m*). [542]

Workmen's Compensation.—Where outdoor relief has been given to a person pending the settlement of his claim to compensation under the Workmen's Compensation Acts, and either (a) such relief would not have been granted had the person been in receipt of compensation; or (b) such relief is in excess of the amount which would have been granted had the person received compensation; the council may give notice to the person liable to pay the compensation and may claim the amount of the relief or excess relief so granted not exceeding the total amount of the compensation. If any part of the compensation had been paid before notice was received this must be deducted from the claim made by the council.

If a person so liable to pay compensation gives the council notice that he intends to pay, or has paid compensation, he will not be liable for any relief afforded after the date of the payment of compensation or after the time at which the notice so given is received by the council whichever is the later (*n*).

It will be noted that repayment can only be claimed in respect of outdoor relief and not where the person has been maintained in an institution. [543]

Widows' and Orphans' Pensions.—If a council had granted outdoor relief to or on account of any person who, though entitled to a pension under the Widows', Orphans' and Old Age Contributory Pensions Act, 1936, is not at the time receiving payment on account thereof, and either :

- (a) the relief would not have been granted if that person had then been receiving payment on account of a pension ; or
- (b) the relief is in excess of the amount which would have been granted to that person if he had been receiving payment on account of a pension ;

(i) Royal Army Pay Warrant, 1922, Art. 1074.

(k) Police Pensions Act, 1921, s. 14 (2) ; 12 Halsbury's Statutes 880.

(l) *Ibid.*, s. 14 (3).

(m) *Ibid.*, s. 14 (5).

(n) Workmen's Compensation Act, 1925, s. 41 ; 11 Halsbury's Statutes 579.

the Minister of Health may, if any sum accruing in respect of any part of the period becomes subsequently paid, treat the sum as reduced by an amount not exceeding such an amount as the council certify to have been so paid or so paid in excess as the case may be, in respect of the period in respect of which the said sum accrued, and the Minister may pay to the council the amount by which the sum is treated as having been reduced accordingly (o). [544]

Unemployment Insurance Benefit and Unemployment Assistance.—

When a county or county borough council have granted outdoor relief to a person not in receipt of benefit, in excess of the amount which would have been granted if that person had been in receipt of benefit, the Minister of Labour may, if a claim is made by that person for benefit in respect of any part of the period during which relief has been granted and subsequently allowed, treat the benefit so allowed as reduced by an amount not exceeding such an amount as the council certifies to have been paid in respect of the period for which the benefit was allowed, and the Minister may pay to the council the amount by which the benefit is treated as having been reduced accordingly, so, however, that the total charge on the Unemployment Fund shall not be greater than the amount of the benefit allowed (p).

Where a council have granted outdoor relief to a person in respect of whom an application for unemployment assistance under sect. 36 (3) of the Unemployment Act, 1934 (q), is under consideration, repayment shall be made to the council of the relief given during the period while the decision was pending if it is ultimately decided that the person is eligible for unemployment assistance. Except where the relief has been granted to a separated dependant the council granting outdoor relief in such a case must notify the area office of the Unemployment Assistance Board of all grants of relief in respect of which they may at some later stage wish to make a claim, whether under the Eighth Schedule to the Unemployment Act, 1934 (r), or under sect. 54 (2) of the Unemployment Insurance Act, 1935 (s). The Board's officers will take steps, in conjunction with the officers of the Ministry of Labour, to ensure that, if any relief which is notified to the Board's officer has been issued in circumstances which may give rise to a claim under sect. 54 (2), the fact is brought to the notice of the local office of the Ministry. Before payment of any arrears of benefit the local officer of the Ministry will, if it is known that relief has been issued in circumstances which may give rise to a claim against the arrears, arrange for the transmission to the council of an appropriate form in order that the council may give the certificate required for the purpose of sect. 54 (2). Any sums deducted from benefit for payment to the council are paid through the localised machinery of the Ministry of Labour.

Claims under the Eighth Schedule to the Unemployment Act, 1934, must be rendered to the Board's Area Office. If the Board's officers have reason to think that it may be possible to meet the cost of the relief claimed in whole or in part by a deduction from benefit under sect. 54 (2) of the Unemployment Insurance Act, 1935, they

(o) Widows', Orphans' and Old Age Contributory Pensions Act, 1936, s. 26 ; 29 Halsbury's Statutes 1220.

(p) Unemployment Insurance Act, 1935, s. 54 (2) ; 28 Halsbury's Statutes 530.

(q) 27 Halsbury's Statutes 788.

(r) *Ibid.*, 821.

(s) 28 Halsbury's Statutes 530.

will suspend action on the claim until either the procedure under that section has been completed or it is known that no payment falls to be made under the section, but generally in so far as claims are not made under that section, they will be considered by reference to the provisions of the Unemployment Act and payments due under the Eighth Schedule will be made by the Board in accordance with the certificates of the council.

As the Board cannot accept under the Eighth Schedule any liability to repay the cost of relief issued to separated dependants of a person to whom the Act applies, the only way in which the council may be able to recover the cost of relief is under the provisions, if they are applicable, of sect. 54 (2). Having regard to the general circumstances under which such claims arise, the Board and the Ministry consider that they can best be dealt with if they are rendered direct to the Ministry's local office (*t*). [545]

Old Age Pensions.—An old age pensioner cannot assign or charge an old age pension in respect of the cost of relief afforded to him (*u*). A pensioner who is physically incapable of attending personally at the post office may appoint some other person as agent to receive the pension on his behalf. Such an agent can only draw the pension upon a written undertaking on the occasion of each payment to pay the amount to the pensioner. Where an old age pensioner is chargeable in a public assistance institution and has not become disqualified from receiving his pension, it is customary for the pensioner to appoint an officer of the council to receive the pension on his behalf and to agree to its appropriation or part thereof towards the cost of his maintenance. A council can therefore take action under sect. 20 of the Poor Law Act, 1930 (*a*), only in respect of the sums actually received by and in possession of the pensioner from time to time. [546]

Relief on Loan.—Any relief, or the cost thereof, given to or on account of any person above the age of twenty-one, or to his wife, or any member of his family under the age of sixteen, which the Minister by any rule, order or regulation directs to be given or considered as given by way of loan, shall be considered a loan to that person, whether or not any receipt for or engagement to repay the relief, or cost thereof, or any part thereof, has been given or not by the person to or on account of whom the relief was given (*b*).

In pursuance of the authority given by this section the Minister has ordered that no relief contrary to the regulations contained in the Relief Regulation Order, 1930 (*c*), is to be given by way of loan; but any relief which may be given to, or on account of, any person above the age of twenty-one, either on his own account or on account of his wife, or any member of his family under the age of sixteen, in accordance with those regulations, may be given by way of loan (*d*).

When it is intended that relief shall be given by way of loan it should be declared to be so given at the time it is given.

(*t*) Unemployment Assistance Board's Circular, dated April 28, 1937.

(*u*) Old Age Pensions Act, 1936, s. 7; 29 Halsbury's Statutes 1055; Widows', Orphans' and Old Age Contributory Pensions Act, 1936, s. 36; 29 Halsbury's Statutes 1228.

(*a*) 12 Halsbury's Statutes 980.

(*b*) Poor Law Act, 1930, s. 49; 12 Halsbury's Statutes 992.

(*c*) S.R. & O., 1930, No. 186; *ibid.*, 1090.

(*d*) Relief Regulation Order, 1930, Art. 15; *ibid.*, 1093.

Any relief granted by way of loan may be recovered in a county court or other court for the recovery of small debts.

Where any relief has been given by way of loan, or where any relief or the cost thereof is treated as a loan, in accordance with the provisions of the Poor Law Act, 1930, any justice of the peace may, upon the application of the council providing the relief, and upon proof that the relief was given to or on account of any person, and that the sum due or any part thereof remains unpaid, issue a summons to such person requiring him and his employer to appear before a court of summary jurisdiction, to show cause why any wages due to him, or which may from time to time become due to him, from his employer should not be paid over, in whole or in part, to the council. The court may thereupon direct the employer to pay out of the wages to the council, either in one sum or by such weekly or other instalments as the court may think fit, having regard to the circumstances of the person and his family, the amount of relief, or so much thereof as may from time to time be due or unpaid (e).

There must be evidence of a definite agreement that the relief was received by way of loan (f).

A resolution passed by a board of guardians cancelling the whole of the outstanding balances of relief on loan granted to wives and families of miners who were unemployed by reason of a coal strike without enquiring into their means of repayment has been held to be *ultra vires* (g). [547]

Friendly Society Payment.—Where any person in receipt of relief which has been declared by the council or by their relieving officer to be by way of loan is entitled, whether as a member of a friendly society or otherwise, to any annuity or periodical payment, the trustee or other person bound to make the payment may from time to time pay to the council, as the instalment becomes due, the cost incurred in the relief of that person since the last instalment. Where the expenses of any such relief have been incurred in respect of a person of unsound mind, who is a member of a friendly society, and is as such entitled to receive any payment, the council of a county or county borough may, unless there are dependants, recover therefrom the sum so expended (h). [548]

Recovery from Property of Recipient.—Where any person in receipt of relief has in his possession or belonging to him, any money or valuable security for money, the council of the county or county borough to which he is chargeable, may take and appropriate, or recover as a debt, so much of the money or the produce of the security as will reimburse the council for the amount expended by them in the relief of that person during the previous twelve months (i). The cost of relief under this section may be recovered even although the person had ceased to be chargeable before the claim was made if the property forming the subject of any proceedings was in the possession of the recipient before she ceased to be chargeable (k).

In the event of the death of any person in receipt of relief having in his possession, or belonging to him, any money or property the council

(e) Poor Law Act, 1930, s. 50 ; 12 Halsbury's Statutes 992.

(f) *L.C.C. v. Orford* (1933), Public Assistance Journal, 23rd June, 1933.

(g) *A.-G. v. Tynemouth Union*, [1930] 1 Ch. 616 ; Digest (Supp.).

(h) Poor Law Act, 1930, s. 51 ; 12 Halsbury's Statutes 993.

(i) *Ibid.*, s. 20.

(k) *West Ham Union v. Owens* (1872), L. R. 8 Exch. 37 ; 37 Digest 230, 216.

of the county or county borough in which he dies may reimburse themselves therefrom for the expenses incurred in and about his burial and in and about his maintenance at any time during the twelve months before his death (*l*).

If a person in respect of whom a claim is made under sect. 21 has moneys in the Post Office Savings Bank, and he is not willing to give the necessary authority for the withdrawal of the sum from the bank, the matter may be referred to the Registrar of Friendly Societies for arbitration, and his award is final and conclusive as between the depositor and the council (*m*). [549]

Seizure of Goods.—By order of two justices so much of the goods and chattels may be seized and so much of the annual rents and profits of the lands and tenements of a husband, father or mother may be received by the council as the justices may direct for the bringing up and providing for the wife, child or children who may be deserted and become chargeable (*n*). The Poor Law Act, 1930, does not affect the powers of the councils of counties and county boroughs under the Poor Relief (Deserted Wives and Children) Act, 1718 if and so far as the powers of overseers under that Act were by the Poor Law Amendment Act, 1834, made exercisable by boards of guardians (*o*).

The powers of churchwardens and overseers under the Act have never been made expressly powers of boards of guardians. The Joint Select Committee which considered the consolidation of the enactments relating to the relief of the poor and whose report preceded the passing of the Poor Law Act, 1927, did not feel justified either in treating the powers as powers exercisable by boards of guardians or treating them as no longer existing. The Act of 1718 was, therefore, left outstanding, and a special saving included in sect. 165 (4) of the Act of 1930 preserving the powers if and so far as by virtue of the Poor Law Amendment Act, 1834, they became exercisable by boards of guardians. [550]

Road Accidents.—Where any payment is made, whether or not with an admission of liability, by an authorised insurer or the owner of a motor vehicle in respect of the death of, or bodily injury to, any person arising out of the use of a motor vehicle on a road and the person who has so died or been bodily injured, and to the knowledge of the authorised insurer or such owner received treatment at a hospital, whether as an in-patient or out-patient in respect of the injuries so arising, there shall also be paid by the authorised insurer or owner to such hospital the expenses reasonably incurred by the hospital in affording such treatment after deducting from such expenses any monies actually received by the hospital in payment of the specific charge for such treatment, not being monies received under any contributory scheme. The amount to be paid shall not exceed £50 for each person for treatment as an in-patient or £5 for treatment as an out-patient.

The expenses reasonably incurred means :

- (a) in relation to a person who receives treatment at a hospital as an in-patient, an amount for each day such person is maintained representing the average daily cost for each

(*l*) Poor Law Act, 1930, s. 20 (2) ; 12 Halsbury's Statutes 980.

(*m*) Trustee Savings Bank Act, 1863, ss. 40, 49 ; 17 Halsbury's Statutes 729, 731 ; Savings Banks (Barrister) Act, 1876, s. 2 ; 17 Halsbury's Statutes 740.

(*n*) Poor Relief (Deserted Wives and Children) Act, 1718 ; 12 Halsbury's Statutes 911.

(*o*) Poor Law Act, 1930, s. 165 (4) ; *ibid.*, 1049.

in-patient for the maintenance of the hospital and staff thereof; and

- (b) in relation to a person who receives treatment at a hospital as an out-patient the reasonable expenses actually incurred (*p*).

This provision only applies where the accident occurs to a third party and it does not include the owner's vehicle. [551]

Affiliation Orders.—An affiliation order may be obtained at the instance of the council of a county or county borough to which an illegitimate child becomes chargeable. Payments under such an order should be made to the relieving officer or other officer appointed to receive it. No payments are to be recoverable except in respect of the time during which the child is actually in receipt of relief. Such an order is not to be made, and if made is to cease except for the recovery of arrears when the mother of the child herself has obtained an order. An application for an order may be made at the instance of the council at any time during chargeability and is not restricted to a period of twelve months from the date of birth of the child as normally where the application is made by the mother. If after an order has been made at the instance of the council the mother should apply for an order, the order originally made should be *prima facie* evidence that the man upon whom the order is made is the father of the child (*q*).

An order cannot be made if the mother dies before the hearing of the summons as she is an essential witness (*r*). An order may be obtained even although the mother has married and her husband is able to maintain the child (*s*).

Where an affiliation order has been made at the instance of the council a fresh order may be obtained providing for the continuance of the payment after the child has ceased to be chargeable giving directions as to the person to whom the payments are to be made. When a child in respect of whom an affiliation order has been made on the application of the mother becomes chargeable to the council of any county or county borough, a further order may be obtained for the payment to be made to the relieving officer or some other officer of the council during such time as the child remains chargeable (*t*).

An order may be made transferring the payment to the council even if the mother has left the country. A transfer order is operative for twelve months and is renewable from time to time for similar periods of twelve months. [552]

(*p*) Road Traffic Act, 1930, s. 36; 23 Halsbury's Statutes 637, as amended by Road and Rail Traffic Act, 1933, s. 33; 26 Halsbury's Statutes 898.

(*q*) Bastardy Laws Amendment Act, 1873; 2 Halsbury's Statutes 18; Affiliation Orders Act, 1914, s. 5; 2 Halsbury's Statutes 23.

(*r*) *R. v. Armitage* (1872), L. R. 7 Q. B. 773; 3 Digest 388, 269.

(*s*) *Plymouth Union v. Gibbs*, [1903] 1 K. B. 177; 37 Digest 236, 296.

(*t*) Bastardy Laws Amendment Act, 1872, s. 7; 2 Halsbury's Statutes 17.

(*u*) *Jones v. Merthyr Tydfil Union* (1911), 105 L. T. 203; 37 Digest 236, 299.

RECREATION AND PHYSICAL TRAINING

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Introduction.—The powers of local authorities to make provision for physical training and recreation have been extended in the course of the campaign to improve the physique of the nation. The earlier titles in this work mentioned in the list above were written before the extension of powers, and the statements in this title should be borne in mind in referring to the others.

Local authorities have now great opportunities and an added responsibility to provide playing fields, gymnasia, holiday camps, swimming baths and community centres for persons of both sexes and all ages. In exercising these powers they are playing a part in the national scheme in which they become voluntary partners with the Government, the National Advisory Council for Physical Training and Recreation, and voluntary organisations. The facilities for obtaining grants for the carrying out of these powers render a progressive policy on the part of local authorities more possible of achievement.

The National Fitness Campaign is not fundamentally a new movement. Pioneer work has been done in our schools and colleges over many years, and the educational aspect of physical training has formed the scientific basis of the recreative movement which expresses itself in so-called keep-fit exercises—dancing, swimming, athletics, games and every form of sport and recreation in which the various games and sports associations have for many years played an important part. The new campaign was, however, designed to give cohesion to all the activities connected with physical training and recreation, and is the result of a growing demand among people of both sexes and of every age who realise that physical health is complementary to the most effective employment of the mental faculties and consequently to a greater enjoyment of life. Those responsible for initiating the campaign saw from the first that if it were to achieve a nation-wide appeal there must be no question of compulsion. It was, however, necessary to provide facilities of all kinds, and skilled instructors. Financial aid from the Treasury and wider powers for local authorities were also necessary. To fulfil these purposes the Physical Training and

Recreation Act, 1937 (a), was passed. It is entitled "an Act to provide for the development of facilities for, and the encouragement of, physical training and recreation, and to facilitate the establishment of centres for social activities." [553]

National Advisory Councils and Local Committees.—Two national Advisory Councils for Physical Training and Recreation, one for England and Wales, and one for Scotland, are given statutory recognition. Their members are appointed by the Prime Minister, and their principal duty is to investigate and advise the Government with regard to matters relating to the maintenance and improvement of the physical well-being of the people by means of exercise and recreation (b). The National Council for England and Wales must make arrangements for the establishment of local committees of persons representing higher education authorities and other local authorities, and voluntary organisations and persons of special knowledge and experience. The arrangements must empower local committees to delegate or refer matters to sub-committees or authorise a sub-committee to co-opt members.

The functions of a local committee are (i.) to review the existing facilities for physical training and recreation in the various localities within their area, to direct public interest to the value of such training and recreation and to encourage the promotion of local schemes for the provision of further and better facilities therefor; (ii.) to examine and consider any proposals for the provision of such facilities, and any application for financial assistance by way of a grant under the Act; and (iii.) to transmit any such application with their recommendations thereon to the grants committee referred to below.

A local authority may, either free of charge or on such other terms as may be agreed, place at the disposal of a local committee, or of a sub-committee of such a committee, any offices or staff belonging to or employed by the authority (c).

The estimate of the expenses of the National Councils together with the maintenance of the National College of Physical Training, interim training arrangements before it was established, grants for administration to such bodies as the Central Council of Recreative Physical Training and the National Playing Fields Association, and aid towards the provision of instructors, where necessary, was in the neighbourhood of £170,000 a year. [554]

Grants in Aid.—On the recommendations of a grants committee appointed by the Prime Minister and in accordance with arrangements made by the Treasury, the Board of Education may make grants towards the expenses of a local authority or local voluntary organisation in providing, or in aiding the provision of, facilities for physical training and recreation, including gymnasiums, playing fields, swimming baths, bathing places, holiday camps and camping sites, and other such premises, and in respect of the training and supply of teachers and leaders; and to the funds of any national voluntary organisation having such objects as aforesaid. Grants in aid of maintenance may not be made for facilities provided by a local authority (d). [555]

Extension of Powers of Local Authorities.—A local authority may acquire, lay out, provide with suitable buildings and otherwise equip,

(a) 30 Halsbury's Statutes 712.
(c) S. 2.

(b) S. 1.
(d) S. 3.

and maintain lands, whether situate within or without their area, for the purpose of gymnasiums, playing fields, holiday camps or camping sites, or for the purpose of centres for the use of clubs, societies or organisations having athletic, social or educational objects, and may manage those lands and buildings themselves, either with or without a charge for the use thereof or admission thereto, or may let them, or any portion thereof, at a nominal or other rent to any person, club, society or organisation for use for any of the purposes aforesaid. The authority may also provide and, where necessary, arrange for the training of wardens, teachers and leaders. Sect. 70 of the P.H.A., 1925 (*e*), applies in relation to premises provided by local authorities under these powers.

A county council may provide public swimming baths and bathing places under Part VIII. of the P.H.A., 1936 (*f*).

A local authority may contribute towards expenses incurred by another local authority or by a voluntary organisation, in providing or maintaining within the area of the contributing authority, or on a site where it will benefit any of the inhabitants of that area, any of the above-mentioned premises.

Property previously held for the purposes of sect. 69 of the P.H.A., 1925 (*g*), and of the Museums and Gymnasiums Act, 1891 (*h*), are now held for the purposes of the Physical Training and Recreation Act, 1937 (*i*).

A local authority, other than a parish council, may purchase land compulsorily for any of the above purposes (*k*).

Higher education authorities may supply facilities for social and physical training under sect. 86 of the Education Act, 1921 (*l*), to persons of whatever age (*m*).

A "local authority" means the council of a county, county borough, metropolitan borough, county district or parish, and the Common Council of the City of London (*n*). [556]

National College of Physical Training.—The Board of Education are given powers to provide, maintain and aid one or more National Colleges for Physical Training for England and Wales (*o*). [557]

Voluntary Associations.—Higher education authorities and other local authorities have always co-operated with voluntary organisations and the additional powers with which they are invested by the new Act should make such co-operation doubly effective. Voluntary organisations have in the past been responsible for much of the interest taken in physical training and for providing their members with opportunities for recreation. It is impossible to mention them all by name, but the

(*e*) 13 Halsbury's Statutes 1147. See title ENTERTAINMENTS, PROVISION FOR, Vol. V., p. 372.

(*f*) 29 Halsbury's Statutes 471.

(*g*) 13 Halsbury's Statutes 1146. See title GAMES, PROVISION FOR, Vol. VI., p. 155.

(*h*) 13 Halsbury's Statutes 846. See title GYMNASIA, Vol. VI.

(*i*) Physical Training and Recreation Act, 1937, s. 5; 30 Halsbury's Statutes 714.

(*k*) S. 6.

(*l*) 7 Halsbury's Statutes 177. See title EDUCATIONAL SPECIAL SERVICES, Vol. V., p. 208.

(*m*) Physical Training and Recreation Act, 1937, s. 6; 30 Halsbury's Statutes 715.

(*n*) *Ibid.*, s. 9.

(*o*) *Ibid.*, s. 7.

various team-games associations, swimming and athletic associations, bicycling clubs, rambling clubs, hiking clubs, the Y.M.C.A., the Y.W.C.A., the Boys' and Girls' Brigades, the Scouts, the Guides, the Youth Hostels Association, the National Association of Boys' Clubs and the National Council of Girls' Clubs, the Girls' Friendly Society are representative of the thousands of organisations who have met the demands of young people for exercise in some form or other, free or organised, for many years.

Apart from these associations there are many movements of more recent growth connected with keep-fit classes and recreation, all of whose efforts are directed ultimately towards the same end. Before the Physical Training and Recreation Act, 1937, was passed, the activities of these respective organisations and of the longer-established organisations were so varied and so far-reaching that in June, 1935, through the agency of the Ling Physical Education Association and the National Association of Organisers of Physical Education, both of whom provided the funds for the purpose, the Central Council of Recreative Physical Training was formed with the object of achieving more co-ordination between the various bodies connected with recreation, whose concerted efforts would mean infinitely better results.

The Central Council of Recreative Physical Training has been most successful. Overlapping has been avoided, and there is now more harmony in, and a wider recognition of, the work of recreative associations and more scope for each of them. In addition the Central Council has arranged a number of courses for training men and women as "leaders," the supply of whom still falls far short of the demand. The Government grant under the Physical Training and Recreation Act enabled the Central Council to increase its own staff and to engage a number of travelling representatives, who, themselves trained at recognised physical training colleges, are, while spreading the knowledge of physical education, able also to impress the public with the need for a scientific basis and sound principles in connection with any form of physical training, whether it be educational or recreative.

The National Playing Fields Association also received a grant under the Act. This association, founded in 1925, has done admirable work in promoting interest in recreation and in providing thousands of acres for playing fields and grounds. Such provision has resulted in keeping children of all ages off the streets and so minimising the risk of accidents, and has meant relief for parents already overworked and overpressed as well as exercise and entertainment for their boys and girls. Elementary school teachers who have given up much of their free time to organising games and play for the children deserve their full meed of praise. The art of play-leadership is a vital factor in the success of the Association's work. The courses organised by the National Playing Fields Association for the training of leaders and the many public demonstrations of masses of children taking part in various games and occupations on large playing fields have led to a great increase of interest in organised play and recognition of its value. [558]

Physical Training Colleges.—The mainspring of physical education in this country is to be found in the physical training colleges, which have consistently progressed with their work since the latter part of the nineteenth century. Such colleges as Bedford, Bergman-Osterberg, Chelsea, Anstry and Dunfermline are turning out, year by year, scores of trained teachers of women and girls, and though the provision for men and boys

has not until recently been given such close consideration, much leeway has been made up by the establishment of men's colleges at Glasgow, Leeds and Loughborough; formerly, save for a number of men students trained at Dunfermline, we were dependent on men trained abroad and army instructors for the physical training in boys' schools and men's clubs.

The courses in the men's and women's colleges involve theoretical and physical training. The study of physiology, anatomy, hygiene, the theory of medical gymnastics, the principles of education, is supplemented by practical instruction in gymnastics, dancing, games, athletics, swimming and all forms of physical exercise; practical experience in teaching is gained in schools, under supervision, and in the case of women, who qualify also in massage and medical gymnastics, practical experience in the college clinics and in hospitals is also provided. No teacher is considered fully qualified without a recognised diploma or certificate, while in the women's colleges where a three-year training is compulsory, the Diplomas of the University of London in the Theory and Practice of Physical Education and of the Chartered Society of Massage and Medical Gymnastics are obtainable in addition to the college diplomas.

From these trained students are drawn the teachers of physical education in the schools, lecturers in the training colleges, organisers under local education authorities and inspectors under the Board of Education. Such teachers, too, are largely responsible for the keep-fit movement in the country, where their knowledge of educational gymnastics and the scientific principles underlying them as well as their experience in games, dancing, swimming and other forms of recreation, is particularly valuable. It cannot be too often reiterated nor too strongly emphasised that the organisers of recreative physical training should be persons with experience in educational gymnastics and the theoretical knowledge involved, so that the forms of exercise provided for the public should be properly graded.

The Ling Physical Education Association (*p*) founded in 1899, taking its name from the great Swedish pioneer in physical education, Pehr Henrik Ling, is the professional association to which men and women diplômés of the three-year training colleges can belong. It is, in fact, the largest representative body of qualified teachers in physical education in the country and has as its aims the maintenance of a high standard of physical training, the development of initiative and the encouragement of new ideas consistent with this standard. It arranges vacation courses and demonstrations and has been represented by teams at various international exhibitions and conferences abroad, while the film of the association, "Building an A1. Nation", has been shown all over the world. It is in touch with associations abroad whose work is based on the Ling principles, through its affiliation to the *Fédération Internationale de Gymnastique Ling*. [559]

Schools.—In elementary schools instruction on the lines of the syllabus drawn up by the Board of Education in 1933 is given by teachers trained in the "Normal" training colleges. The syllabus is comprehensive and allows for ample scope in all forms of exercise, of a free character in the infant schools, and graded to more advanced work in the junior and senior schools. These teachers are largely under the supervision of organisers, who, trained at recognised physical training colleges and with teaching experience themselves, are qualified

to hold classes for teachers, to make suggestions and to give demonstration lessons when necessary. The regulations of the Board of Education decree that there shall be one physical training lesson a day, such physical training to include physical exercises, games, dancing, swimming or athletics.

In the secondary schools teachers with a physical training college diploma are responsible for the physical training, and the hours set aside for it, varying from one to five a week, are also devoted to gymnastics, games, swimming and dancing, though the last subject is not general and is not compulsory.

Medical inspection is provided and teachers of physical training in many schools work in close conjunction with the medical officers, since they are qualified to deal, under medical supervision, with cases needing remedial exercise and with minor accidents which may occur. The increased interest taken by the medical profession in physical training and the report issued by the British Medical Association before the passing of the Physical Training and Recreation Act were undoubtedly a contributory factor to its construction.

Classes of all kinds of physical training, recreational and educational, are available in the polytechnics and evening institutes. There is every reason to suppose that the problem of providing for boys and girls of school and of post-school age is on the way to being solved, and that if the local authorities use the powers given them to the full, adequate provision should be made for persons of every class and of every age to avail themselves of recreation, organised or free, and in so doing to assure themselves of increased physical and mental capability. [560]

RECREATION GROUNDS

See GAMES, PROVISIONS FOR; OPEN SPACES; PUBLIC PARKS.

REDEMPTION FUNDS

See BORROWING; REDEMPTION OF CAPITAL EXPENDITURE; STOCK.

REDEMPTION OF CAPITAL EXPENDITURE

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See also titles : BORROWING ;
CONSOLIDATED LOANS FUND.

Introductory Note.—There is no statutory definition of the term “capital expenditure” in its relationship to the finances of local authorities. Generally it has the same broad meaning as in ordinary accountancy. Any expenditure which creates a permanent asset, whether it be land, permanent works or other things, may be said to be capital expenditure. Such expenditure falls into two main classes: (a) *productive*, which includes any expenditure on permanent assets which produce an income, *e.g.* trading undertakings, housing estates, etc., and (b) *non-productive*, which includes assets which do not normally produce an income, except to a small degree, *e.g.* administrative buildings, hospitals, etc. Certain other items fall into this class such as sewers and roads which consist of non-saleable assets. Many authorities consider that such expenditure should be treated as deferred charges rather than as capital expenditure creating assets. There are also certain other items of expenditure which are met out of capital moneys but which do not create capital assets, *e.g.* discounts and expenses of stock issues and costs of local Acts. This expenditure is usually spread over a period of years.

For the purpose of this title, therefore, capital expenditure may be considered to include: (a) expenditure creating permanent assets no matter how defrayed; (b) other expenditure, the cost of which is spread over a period of years, *i.e.* deferred charges.

Capital expenditure is not synonymous with expenditure out of loan. Some of the expenditure falling within class (a) above is frequently defrayed direct from revenue in a single year, but it is nevertheless capital expenditure. [561]

Methods of Financing Capital Expenditure.—A local authority would have difficulty in providing the cost of all its capital expenditure from

its rates and revenues in the year in which the expenditure is incurred. Capital expenditure is financed in one of the following ways:

From Revenue.—See title CAPITAL EXPENDITURE OUT OF INCOME, Vol. II.

From Special Funds.—Many authorities have now secured powers to establish special funds, the chief of which are capital and capital reserve funds, out of which the cost of some of the capital expenditure may be defrayed. See title BORROWING, Vol. II.

From Loans.—Various general Acts authorise local authorities to borrow by way of loans to defray capital expenditure. See title BORROWING, Vol. II. In many cases this is the only way in which heavy expenditure can be met and the following are, briefly, the considerations which justify the policy: (a) permanent works benefit future rate-payers and those who benefit should bear their share; (b) it gives stability to local finance and eliminates undesirable fluctuations in rate charges from year to year; (c) the policy in relation to trading undertakings is in accordance with commercial practice and is the only feasible one. [562]

Redemption of Capital Expenditure.—The redemption of capital expenditure means the ultimate provision of the cost thereof from revenue moneys. Where, as most frequently happens, the cost is originally met from loan, redemption takes place as and when provision is made from revenue account for the purpose of paying off the loan debt.

This principle of redemption is fundamental to local government finance and applies to all the activities of local authorities, who must ultimately bear the cost of all their activities direct from their rates and revenues. This has always been the declared policy of the Government, as may readily be seen from an examination of the statutory borrowing powers. No local authority may borrow (except in a few minor instances) unless specifically authorised, usually either by a general Act with the consent of the appropriate Government department, or under a local Act (see title BORROWING, Vol. II); and all such special powers require that provision for redemption should be made by repaying the loan within a fixed period. Normally, the Act lays down a maximum period and the local authority provides for redemption within a not greater period than that approved by the Government department, which is as a rule well within the life of the asset. These principles were fully confirmed in the report of the select committee on the Repayment of Loans by Local Authorities, 1902.

Although the policy of defraying capital expenditure of trading undertakings from loans may be justified by a comparison with commercial concerns, the latter do not normally redeem their capital, but a local authority must do so. Moreover, the lender to a local authority expects only a fixed interest, and local authorities do not usually provide specifically for depreciation of their assets, although the provision for redemption in the case of local authorities is for all practical purposes equivalent to the depreciation charge in the case of commercial concerns.

This policy has imparted confidence to lenders and is one of the factors which enables the authorities to borrow at very reasonable interest rates. [563]

Redemption of Capital Expenditure compared with Repayments to Lenders.—Redemption of capital expenditure is not necessarily the same as the repayment to lenders of the loans out of which the

expenditure has been originally defrayed. The former refers solely to the annual provision from revenue and is based on the loan periods sanctioned by Acts or Government departments; while the latter merely means the repayment of loans to the persons who advanced the money and reborrowings must be effected to the extent to which the provision made for redemption is insufficient actually to repay the debt. Thus it frequently happens that capital expenditure, in respect of which borrowing has been sanctioned subject to a redemption period of, say, sixty years, is originally met by means of short-term mortgages or stock with a life of, say, twenty years.

The redemption provision may take one of two main forms: (a) *external*, which arises generally where the loans are raised for the full sanction period and redemption contributions are made direct to the lenders by way of yearly or half-yearly instalments; and (b) *internal*, which is the more usual process and involves the setting aside in each year of amounts for redemption. This is usually done by provision of sinking funds to which annual contributions are made and which are then available to repay loans at maturity, to defray new capital expenditure, or for investment. Where loans have been pooled, the annual contributions are paid direct into the pool and are thus immediately available to these purposes. See title CONSOLIDATED LOANS FUND, Vol. III.

The effect of this system of pooled loans is to divorce completely the actual borrowing from the annual contributions made from revenue for redemption of capital expenditure. The local authority is enabled to raise its loans in the way which is most convenient to it without regard to the period within which the debt must be redeemed. [564]

Methods of Redemption.—The methods to be adopted in respect of the individual types of security are dealt with under the separate headings relating thereto, to which reference should be made. The provisions of sect. 212 of the L.G.A., 1933 (a), are typical and require that every sum borrowed by way of mortgage shall be paid off by equal yearly or half-yearly instalments of principal, or of principal and interest combined, or by means of a sinking fund, or partly by one of those methods and partly by another, the first provision being normally made within twelve months, or, where the moneys are repayable by half-yearly instalments, within six months of the date of borrowing. There is, however, a special provision in connection with certain revenue-producing undertakings enabling contributions to be suspended during the period of construction, subject to a maximum period of five years (b). The sinking fund may be accumulating or non-accumulating, and may be used for the repayment of actual loans or may be invested (c). Where it appears that the amounts which are being annually contributed will eventually prove inadequate, increased contributions must be made; while, if a surplus appears likely to arise, permission may be given for the contributions to be reduced (d).

The Stock Regulations, 1934, make provision for the establishment of sinking funds in respect of capital expenditure defrayed by means of stock issues. [565]

The various alternative methods are compared broadly below.

(a) 26 Halsbury's Statutes 420.

(b) L.G.A., 1933, s. 198 (2); 26 Halsbury's Statutes 414.

(c) *Ibid.*, s. 213; *ibid.*, 420.

(d) *Ibid.*, s. 214.

Equal Yearly or Half-yearly Instalments of Principal.—This method applies generally in respect of loans raised for the full loan period, usually called instalment loans. The amounts payable in respect of principal remain constant throughout the loan period, while the interest charge, and therefore the total annual burden, falls. This may be considered an advantage in certain cases where the costs of repairs tend to rise in later years, as the method helps to equalize the total annual charge to revenue in respect of the asset. [566]

Equal Yearly or Half-yearly Instalments of Principal and Interest Combined (Annuities).—This also applies generally to loans raised for the full loan period, usually termed annuity loans. The burden of loan charges remains constant throughout the period, but where repairs increase, the total burden increases in later years. The amount provided in the earlier years for principal is less than under the instalment method and therefore the total burden is ultimately greater. [567]

Sinking Fund.—This method applies to all other loans, a definite amount being set aside each year to the fund. Where the non-accumulating method is used, the annual amount is equal throughout the period. Interest on any investments is credited to revenue account, thus decreasing the total annual burden in later years. Where the accumulating method is used, interest on the amount in the fund is credited at the prescribed rate each year from revenue account, to which account interest on investments is in turn credited.

It has been indicated that the sums set aside for sinking fund provision may be used to defray new capital expenditure. There is no specific statutory authority for this, but there is nothing to prevent it being done, and the soundness of the policy was approved by the select committee on the Application of Sinking Funds in Exercise of Borrowing Powers, 1909. [568]

Loans Pools.—Where loans pools exist the contributions thereto may be based on any of the above methods. No sinking funds exist for and no actual loans are related to individual borrowing powers, annual contributions being made direct to the pool and thus being immediately available for repayment or for new capital expenditure. (See title CONSOLIDATED LOANS FUND, Vol. III.) [569]

REDEVELOPMENT

See SLUM CLEARANCE.

REDUNDANT LICENCES, COMPENSATION FOR

See COMPENSATION FOR REDUNDANT LICENCES.

REFORMATORY SCHOOLS

See APPROVED SCHOOLS.

REFRACTORY CHILDREN

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See also titles :

APPROVED SCHOOLS ;	INFANTS, CHILDREN AND YOUNG PERSONS ;
FIT PERSON, LOCAL AUTHORITY AS ;	JUVENILE COURTS.

Statutory Provisions.—Sects. 64 (as amended by the Children and Young Persons Act, 1938), and 65 of the Children and Young Persons Act, 1933 (*a*), and the Summary Jurisdiction (Children and Young Persons) Rules, 1933 (*b*), are in point. [570]

Local Authorities.—The powers and duties involved are exerciseable, where children are concerned, by local education authorities for elementary education, and where young persons are concerned, by councils of counties and county boroughs, subject to certain exceptions (*c*). Where a poor law authority is involved, however, that authority is a county or county borough council, or a joint committee of two or more such councils (*d*). [571]

Application by Parent or Guardian.—The parent or guardian of a child or young person under seventeen years of age who is unable to control him may bring him before a juvenile court. He may be taken to a remand home or other place of safety until he can be brought before the court (*e*) ; or his parents may bring him, or the court may, under rules 16 and 23 of the Summary Jurisdiction (Children and Young Persons) Rules, issue a summons or warrant to compel attendance of the child or young person.

If the juvenile court, upon hearing the case, is satisfied that the child or young person is beyond the parent's control, that the parent understands the results that will follow from the court's order and agrees to its being made, and that it is expedient so to deal with the child or young person, it may either order him to be sent to an approved school or place him under the supervision of a probation officer or other person for a period of not more than three years. Committal to an

(*a*) 26 Halsbury's Statutes 209, 210.

(*b*) S.R. & O., 1933, No. 819/L.23.

(*c*) Children and Young Persons Act, 1933, s. 96 ; 26 Halsbury's Statutes 232.

(*d*) *Ibid.*, s. 107 (1) ; *ibid.*, 238.

(*e*) *Ibid.*, s. 67 ; *ibid.*, 210 ; or, without making any other order or in addition to making a suspension order, the court may commit him to the care of a fit person.

approved school cannot, in these cases, take place unless the local authority of the area in which the child or young person is resident agrees (*f*). The local authority concerned should therefore receive notice of the proceedings (*g*).

If the child or young person be placed under supervision and it subsequently appears in his interests that he should be further dealt with, he may, while the order is in force and he is under seventeen years, be brought before a juvenile court, and that court may either commit him to the care of a fit person (who may be a local authority) or order him to be sent to an approved school (*h*). Sect. 4 of the Children and Young Persons Act, 1933, confers powers on the court to insert in a supervision order provisions as to residence and other matters. Such orders may be varied or revoked under the same section, and the person may be brought before the court even after he has attained the age of seventeen years, for the purpose of the variation or revocation of the order. Provisions as to residence have no effect after the person attains the age of eighteen. [527]

Application by Poor Law Authority.—If a poor law authority satisfies a juvenile court that a child or young person under seventeen years of age who is maintained in, or boarded out from, one of its schools or institutions is refractory, and that it is in his interests that he should be sent to an approved school, the court may order him to be so sent (*i*). Presumably the authority may, by its officers, actually bring him, or may adopt one of the methods indicated above. [573]

London.—The Children and Young Persons Act, 1933, applies to London. Under sect. 97 (*k*) the City corporation has the powers and duties of a local authority as regards young persons. The City is not exempt, however, from liability to contribute to the expenses of the L.C.C., as local authority under the Act, but the L.C.C. are to repay to the City contributions paid by the City in respect of persons in the care of the managers of an approved school. The expenses of the City corporation are borne out of the general rate. [574]

- (*f*) Children and Young Persons Act, 1933, s. 64 ; 26 Halsbury's Statutes 209.
- (*g*) Summary Jurisdiction (Children and Young Persons) Rules, 1933, r. 23.
- (*h*) Children and Young Persons Act, 1933, s. 66 ; 26 Halsbury's Statutes 210.
- (*i*) *Ibid.*, s. 65 ; *ibid.*
- (*k*) 26 Halsbury's Statutes 234.

REFRIGERATORS

See MARKETS AND FAIRS.

REFUGES IN STREETS

See ROAD AMENITIES.

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REFUSE

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See also titles :

ASHPITS ;
CESSPOOLS ;
NUISANCES SUMMARILY ABATABLE
UNDER THE PUBLIC HEALTH ACTS ;

POLLUTION OF RIVERS ;
SANITARY CONVENIENCES ;
SCAVENGING ;
STABLES AND MEWS.

REFUSE COLLECTION. DUTIES OF LOCAL AUTHORITIES

House Refuse.—Every local authority may, and when required by the Minister of Health must, themselves undertake the removal of house refuse and the cleansing of earthclosets, privies, ashpits and cesspools (a), either for the whole or a portion of their district (b). The local authority are not empowered to make a charge, but the section does not require an authority to remove trade refuse free of charge (c). [575]

A local authority may rescind a resolution undertaking the removal of refuse or the cleansing of earthclosets, etc., and thereupon their liability for such removal or cleansing ceases (d). A local authority are not bound to empty cesspools upon demand. In a case where the

(a) These words are to be read distributively, and a local authority may undertake the cleansing of such of these conveniences as they decide by resolution. See *Stainland and Holywell Green Industrial Corn and Provision Society v. Stainland Urban Council*, [1906] 1 K. B. 233 ; 38 Digest 237, 664.

(b) P.H.A., 1936, s. 72 (1) ; 29 Halsbury's Statutes 382.

(c) See *post*, p. 261.

(d) See *Whitbread & Co. v. Staines R.D.C.*, [1925] Ch. 89 ; 38 Digest 237, 661.

authority decided to empty them once in every three months, and more frequently only if paid for the additional service, it was held that they had a reasonable excuse (e) for not emptying a cesspool within three months from the date of the last emptying without payment (f). [576]

A local authority who themselves undertake the removal of house refuse may make bye-laws imposing upon the occupiers of premises certain duties designed to assist in the work of refuse collection (g). [577]

If a local authority, having undertaken to cleanse privies, etc., create a nuisance owing to inefficient cleansing, they cannot take proceedings under sect. 93 of the P.H.A., 1936 (h), with a view to the abatement of the nuisance by the substitution of waterclosets for the privies (i). A local authority are not entitled to refuse to cleanse privies because the privies do not meet with their approval (k). But a defective privy may be "insufficient closet accommodation" within the meaning of sect. 44 of the P.H.A., 1936 (l), and the local authority might call for its conversion into a watercloset (m). [578]

Where a local authority have themselves undertaken or contracted for the removal of house refuse or the cleansing of earthclosets, privies, ashpits or cesspools, and they fail, without reasonable excuse, after notice in writing from the occupier of the premises, to remove the refuse or cleanse the earthcloset, etc., within a period of seven days from the date of the notice, the local authority are liable to pay to the occupier a penalty not exceeding 5s. for each day the default continues after the expiration of the said notice (n). A local authority are empowered by sect. 74, P.H.A., 1936 (o), to undertake the removal of refuse or the cleansing of any earthcloset, privy, ashpit or cesspool which they are not obliged to remove or empty, or to remove refuse or empty earthclosets, etc., more frequently than they are legally required to do. An authority are also enabled to dispose of any refuse delivered at any place appointed by them, by the occupier or owner of premises. In either case, the local authority may make such charge, if any, as they think fit. [579]

Trade Refuse.—A local authority are not required to remove free of charge under sect. 72 of the P.H.A., 1936 (p), any trade refuse. Where an authority have undertaken under sect. 73 of the P.H.A., 1936 (q), to remove trade refuse, or any kind of trade refuse, the occupier of any premises may require the authority to remove any such trade refuse. If the local authority fail to remove the trade

(e) P.H.A., 1936, s. 72 (2); 29 Halsbury's Statutes 382.

(f) *Leck v. Epsom R.D.C.*, [1922] 1 K. B. 383; 38 Digest 237, 660.

(g) P.H.A., 1936, s. 72 (3); 29 Halsbury's Statutes 382; and see *post*, p. 264.

(h) 29 Halsbury's Statutes 396; and see title NUISANCES SUMMARILY ABATABLE UNDER THE PUBLIC HEALTH ACTS.

(i) *Barnett v. Laskey* (1898), 63 J. P. 5; 38 Digest 236, 659.

(k) *Pegg and Jones, Ltd. v. Derby Corpn.*, [1909] 2 K. B. 511; 38 Digest 237, 666.

(l) 29 Halsbury's Statutes 359.

(m) *Nicholl v. Epping Urban Council*, [1899] 1 Ch. 844; 38 Digest 228, 590; followed in *Carlton Main Colliery Co. v. Hemsworth Rural Council* (1922), 38 T. L. R. 748; 38 Digest 228, 591.

(n) P.H.A., 1936, s. 72 (2); 29 Halsbury's Statutes 382.

(o) 29 Halsbury's Statutes 383.

(p) See *ante*, p. 260.

(q) 29 Halsbury's Statutes 382.

refuse within seven days after the request from the occupier, he may recover a sum of 5s. for every day during which the local authority continue to make default. The local authority *must* make reasonable charges for the removal of trade refuse (*r*). An application may be made to a court of summary jurisdiction to determine what is "trade refuse," or trade refuse to which the local authority's undertaking relates, or the reasonableness of the charges made by the authority for the services rendered (*s*). [580]

What is "House Refuse" and "Trade Refuse"?—The question as to what is "house refuse" and what is "trade refuse" is a difficult one, and although there have been numerous cases on the matter, there are still doubts as to the class to which a particular type of refuse belongs.

The only statutory definitions are those contained in sect. 304 of the P.H. (London) Act, 1936 (*t*), which are as follows :

"house refuse" means ashes, cinders, breeze, rubbish, nightsoil or filth, but does not include trade refuse ;

"trade refuse" means the refuse of any trade, manufacture or business, or of any building materials. [581]

"House refuse" does not include dust and ashes, the exclusive produce of manufactories (*u*). Under sect. 128 of the Metropolis Management Act, 1855, it was held that ashes arising from coal burnt in the furnace of a steam engine used for the purpose of sawing and lifting timber in connection with the business of a pianoforte manufacturer was trade and not house refuse (*b*). Under the Metropolis Management Acts it was held that a local authority were bound to remove refuse from a workhouse, although such premises were rated below those of other premises in the parish (*c*) ; also that a local authority were not bound to remove articles improperly placed in a dustbin such as "broken glass, shoes, and other things which it might not be convenient otherwise to get rid of." The local authority are only required to remove such refuse as might become prejudicial to health if allowed to accumulate. Where such articles as broken glass etc., improperly placed in the refuse receptacles, were removed and afterwards appropriated by the servants of the local authority, the contractor employed for the collection and removal of refuse was held not entitled to compensation from the authority, on the ground that his contract included only such refuse as the authority were bound to remove (*d*). It was also held under the same Acts that the clinkers from the boilers belonging to an hotel, which were used to generate steam for supplying power for electric lighting and for warming and cooking and other purposes of the hotel, were not the refuse of a trade, manufactory or business (*e*). Under sect. 42 of the P.H.A., 1875, it was held that clinkers from the boilers of a steam laundry were not "house refuse" (*f*) ; and in a case concerning a block of residential flats,

(*r*) S. 73 (2) ; 29 Halsbury's Statutes 383.

(*s*) S. 73 (3) ; *ibid*.

(*t*) 30 Halsbury's Statutes 603, 605.

(*u*) *Lyndon v. Standbridge* (1857), 2 H. & N. 45 ; 38 Digest 234, 641.

(*b*) *Gay v. Cadby* (1877), 2 C. P. D. 391 ; 38 Digest 234, 642.

(*c*) *Holborn Guardians v. St. Leonard, Shoreditch Vestry*, (1876), 2 Q. B. D. 145 ; 26 Digest 399, 1246.

(*d*) *Collins v. Paddington Vestry* (1879), 48 L. J. (Q. B.) 345 ; 38 Digest 236, 656.

(*e*) *St. Martin's Vestry v. Gordon*, [1891] 1 Q. B. 61 ; 38 Digest 235, 647.

(*f*) *London and Provincial Laundry Co. v. Willesden Local Board*, [1892] 2 Q. B. 271 ; 38 Digest 235, 648.

it was held that the clinkers and ashes from the furnaces of an electric light plant were trade refuse within the meaning of sect. 33 of the P.H. (London) Act, 1891 (*g*). It was held that ordinary refuse from an hotel, comprising such things as ashes from grates, sawdust strewn on the kitchen floors for the sake of cleanliness, empty sauce bottles and preserve tins, straw packing cases for bottles, tea leaves, waste paper, egg-shells, lemon peel, the dust from the rooms and staircases, and from time to time quantities of broken crockery-ware and glass, was "house refuse" within the meaning of the P.H. (London) Act, 1891. The court expressed the opinion that in considering whether refuse is "house refuse" or "trade refuse," regard must be had to its physical nature and character, and not to the process or circumstances by which it is accumulated (*h*). In the case of a tea-shop for providing customers with refreshments and food for consumption on the premises, some of the food being cooked or prepared on the premises, the refuse, which consisted of ashes, clinkers, coffee grounds, newspapers, cabbage leaves, egg-shells, dust and general dirt, broken crockery, tea leaves, potato parings, scrapings from the sink and sweepings from the rooms, but not including scraps left by customers which were given away, was held to be "house refuse" within the meaning of the P.H. (London) Act, 1891, and the local authority were held bound to remove it (*i*). [582]

It will be seen that the courts, in considering the difference between house and trade refuse, have held that the character of the refuse rather than its place of production is to be the determining factor. Hence, refuse from hotels and restaurants is mainly, if not entirely, house refuse. Under sect. 72 (2) of the P.H.A., 1936, a local authority are not in default until the expiration of seven days from the date of the receipt of a notice requiring the removal of refuse. In other words, a local authority cannot be required to remove refuse more frequently than once a week. For hotels and similar premises where large quantities of refuse are produced, a weekly collection would be quite insufficient, but in view of the above section there would seem to be no reason why a local authority should not make a charge for any additional service rendered in addition to the once-weekly collection (*j*). [583]

Garden Refuse.—In some areas, the collection of garden refuse presents a difficult problem. There is no legislation dealing with the matter and there are no reported cases on it. In many towns, garden refuse is removed along with the ordinary house refuse without charge, provided the quantity is not large, but where a considerable amount of garden refuse is produced, it is classed as trade refuse and charged for at the usual rates. [584]

Power of Entry.—An officer of a local authority must be admitted to premises for the purpose of examining as to the existence of any nuisance thereon, at all reasonable hours, in accordance with sect. 287 of the P.H.A., 1936 (*k*). If admission is refused, any justice on complaint thereof on oath by an officer of the local authority, made after due notice has been given to the occupier of the premises concerned

(*g*) *St. Margaret's Vestry v. Queen Anne Mansions Co.* (1893), 57 J. P. Jo. 277, D. C.

(*h*) *Westminster Corpn. v. Gordon Hotels, Ltd.*, [1906] 2 K. B. 39; 38 Digest 235, 646.

(*i*) *Lyons & Co. v. London Corpn.*, [1909] 2 K. B. 588; 38 Digest 235, 646.

(*j*) See also P.H.A., 1936, s. 74, *ante*, p. 261.

(*k*) 29 Halsbury's Statutes 507.

of the intention to do so, may by warrant authorise the local authority by any authorised officer (*l*) to enter the premises, if need be by force. An order so granted remains in force until the nuisance is abated or the work for which the entry was necessary has been done.

No one can enter premises without the consent of the occupier unless by an order of a justice. In a case (*m*) where members of a local authority entered without the consent of the occupier of premises and the occupier prevented their exit, it was held that no offence had been committed by him under sect. 306 of the P.H.A., 1875 (*n*). [585]

Obstruction.—Any person who wilfully obstructs any officer of the local authority employed in the execution of the P.H.A., 1936, is liable to a penalty (*o*). Wilful obstruction need not amount to actual physical force (*p*). [586]

Compensation for Damage done by Local Authority.—If a person sustains damage by reason of the exercise of any of the powers of the P.H.A., 1936, in relation to any matter as to which he is not himself in default, full compensation must be paid by the local authority (*q*). In case of dispute the amount of compensation must be settled by arbitration, or if the sum involved is less than £50, by a court of summary jurisdiction, at the option of either party. [587]

"Totting."—The practice of "totting"—the removal of selected articles or materials from refuse receptacles or tips—is commonly practiced in some districts, especially in London (*r*). Sect. 76 (3) of the P.H.A., 1936 (*s*), however, imposes a penalty upon any person who sorts over or disturbs the contents of any dustbin placed in any street or forecourt for the purpose of its contents being removed by the local authority, or who sorts over or disturbs any refuse deposited by an authority. [588]

DUTIES OF PRIVATE PERSONS

House Refuse.—Where a local authority do not themselves undertake the removal of house refuse and the cleansing of earthclosets, privies, ashpits and cesspools, they may make bye-laws imposing the duty of such removal or cleansing, at such intervals as they think fit, upon the occupiers of premises (*t*). Bye-laws may be made in respect of part of the district of a local authority, the work of removal and cleansing in the remaining portion being done by the authority themselves. [589]

A local authority who themselves undertake the removal of house refuse and the cleansing of earthclosets, etc., may make bye-laws imposing upon the occupiers of premises certain duties with a view to assisting in the work of removal or cleansing (*u*). Bye-laws made in

(*l*) As to who are "authorised officers," see P.H.A., 1936, s. 343; 29 Halsbury's Statutes 536.

(*m*) *Consett U.D.C. v. Crawford*, [1903] 2 K. B. 183; 36 Digest 239, 776.

(*n*) 13 Halsbury's Statutes 754; see now P.H.A., 1936, s. 288; 29 Halsbury's Statutes 509.

(*o*) P.H.A., 1936, s. 288; 29 Halsbury's Statutes 509.

(*p*) *Borrow v. Howland* (1896), 60 J. P. 391; 38 Digest 236, 652.

(*q*) P.H.A., 1936, s. 278; 29 Halsbury's Statutes 500.

(*r*) See Report of M. of H. on "Public Cleansing in the Administrative County of London," 1929, H.M.S.O., pp. 18 *et seq.*

(*s*) 29 Halsbury's Statutes 385.

(*t*) P.H.A., 1936, s. 72 (4); 29 Halsbury's Statutes, 382.

(*u*) *Ibid.*, s. 72 (3).

accordance with these provisions usually contain clauses dealing with the following matters :

- (a) Where the local authority have undertaken the removal of house refuse not less frequently than once a week ; and
 - (i) any premises are provided with one or more dustbins ; and
 - (ii) the authority by a notice duly served upon the occupier of those premises specify the days on which and the hour at which they will remove house refuse from the premises,
 the occupier must place all house refuse in a dustbin and place such dustbin in a position on the premises which will—
 - (a) be conveniently accessible from the nearest street used as a means of access to the premises for the removal of refuse ; and
 - (b) not necessitate the removal of the refuse through a dwelling-house, if other means of access are available.
- (b) Liquid matter must not be deposited in the receptacle (a).

Fæcal, Offensive or Noxious Matter.—A local authority may make bye-laws respecting the following matters (b) :

- (a) For prescribing the times for the removal or carriage through the streets of any fæcal or offensive or noxious matter or liquid, whether such liquid or matter is in course of removal or carriage from within, or without, or through their district.
- (b) For providing that the receptacle or vehicle used therefor shall be properly constructed and covered so as to prevent the escape of any such matter or liquid.
- (c) For compelling the cleansing of any place whereon such matter or liquid shall have been dropped or spilt in such removal or carriage.

The above provisions are supplemental to those contained in sect. 72 (4) of the P.H.A., 1936 (c). Bye-laws made under the above section usually restrict the carriage of fæcal, offensive and noxious matter through the streets to between the hours of 6.30 a.m. and 8.30 a.m. in the months of March to October inclusive, and between the hours of 7.0 a.m. and 9.30 a.m. during the months of November to February (d). [591]

Prevention of Nuisances from Filth, etc.—A local authority may make bye-laws for the prevention of nuisances arising from snow, filth, dust, ashes and rubbish (e). Such bye-laws usually include, *inter alia*, the following provisions :

- (a) A person shall not, in removing any filth, dust, ashes or rubbish from any premises, deposit such filth, dust, ashes or rubbish upon any footway or carriageway.
- (b) Where any cargo, load or collection of filth or rubbish emitting a stench, conveyed to any place within the district to await removal by the owners or consignee, is exposed, without adequate means of preventing the emission of stench therefrom, within one hundred yards :
 - (i.) from any street, or from any premises used wholly or partly for human habitation ; or
 - (ii.) from any school or place of public resort or worship ; or
 - (iii.) from any place in which any person is employed in any manufacture, trade or business ;
 the owner or consignee or any person who may have undertaken delivery to the owner or consignee of the filth or rubbish shall not,

(a) See Model Bye-Laws of M. of H., Series IA.

(b) P.H.A., 1936, s. 82 (1) ; 29 Halsbury's Statutes 387.

(c) See *ante*, p. 264.

(d) See Model Bye-Laws of M. of H., Series IIA.

(e) P.H.A., 1936, s. 81 ; 29 Halsbury's Statutes 387.

without reasonable excuse, cause or suffer it to remain in such place for more than twenty-four hours after its deposit (*f*). [592]

Removal of Offensive Accumulations.—A sanitary inspector in any borough or urban district or rural district or contributory place where sect. 49 of the P.H.A., 1875 (*g*), was in force on October 1, 1937, has power to require by notice the removal of any accumulation of manure, dung, soil or filth or other offensive or noxious matter (*h*). The notice must be served upon the person to whom the accumulation, etc., belongs or upon the occupier of the premises where it exists. If the notice is not complied with within twenty-four hours, the matter may be removed by the inspector and sold by the local authority (*i*). The proceeds of the sale must be applied in payment of the expenses incurred by the authority in the execution of the section, and the surplus, if any, paid on demand to the owner of the matter removed. If the expenses incurred by the authority exceed the proceeds of the sale, the balance may be recovered from the owner or occupier in default (*j*). An accumulation or deposit which is a nuisance or injurious to health may also be dealt with under the nuisance provisions of the P.H.A., 1936 (*k*). [593]

Infectious Rubbish.—Any person who knowingly causes or permits to be placed into any dustbin or ashpit any infectious rubbish, without previous disinfection, is liable to a fine not exceeding £5 (*l*). The local authority must give notice of the above provisions to the occupier of any house in which they are aware that there is a person suffering from a notifiable disease (*m*). This is usually done by the distribution of a leaflet to the occupiers concerned. [594]

Explosives in Refuse.—Acting under the Explosives Act, 1875 (*n*), the Home Secretary has made an order (*o*) dealing with the deposit of explosives in refuse receptacles. The order provides that explosives must not be deposited in any receptacles or place appropriated for refuse, and must not be handed or forwarded to any dustman or other person employed in the removal of refuse, unless due notice has been given to such dustman or person. Explosives must not be conveyed in any carriage or boat used for the removal of refuse. A penalty is imposed upon any person committing an offence against the order, and also upon the person owning the carriage or boat, the person in charge of the carriage or boat, and the owner of the explosives, unless the person charged proves that he had supplied proper means and issued proper orders for the due observance of the rules laid down in the order. [595]

Secondary Means of Access to Houses for purposes of Refuse Collection.—A local authority must reject the plans of a house, or extension thereof, if satisfactory means of access for the purpose of the removal of house refuse and other matters is not shown thereon. A penalty

(*f*) See Model Bye-Laws of M. of H., Series II.

(*g*) 13 Halsbury's Statutes 646.

(*h*) P.H.A., 1936, s. 79; 29 Halsbury's Statutes 386.

(*i*) *Ibid.*, s. 276; *ibid.*, 499.

(*j*) *Ibid.*, s. 79 (2).

(*k*) *Ibid.*, ss. 92 *et seq.*

(*l*) *Ibid.*, s. 156.

(*m*) As to definition of "notifiable disease," see P.H.A., 1936, s. 343.

(*n*) 8 Halsbury's Statutes 385.

(*o*) S.R. & O., 1924, No. 1129.

is imposed upon any person who closes or obstructs the means of access by which refuse or offensive matter is removed from any house, unless the consent of the local authority is obtained thereto; and the authority, in giving their consent, may impose such conditions with respect to the improvement of any alternative means of access, or the substitution of other means of access, as they think fit (*p*). [596]

Service of Notices.—Notices, orders, or other documents required to be served under the P.H.A., 1936, must be in writing (*q*), and may be signed by the clerk, surveyor, M.O.H., sanitary inspector or chief financial officer, or other officer authorised by the local authority (*r*). As to service of notices, see sect. 285 of the P.H.A., 1936 (*s*).

Any notice or other document required to be served upon a local authority (*t*) should be served upon the clerk in accordance with sect. 286 of the L.G.A., 1933 (*u*), which applies to all subsequent enactments. [597]

REFUSE DISPOSAL

Provision of Buildings, Lands, etc.—All matters collected by a local authority in pursuance of the P.H.A., 1936, may be sold by them (*a*).

A local authority may provide places for the deposit of refuse collected by them, and plant and apparatus for treating or disposing of such refuse (*b*). An authority may purchase land compulsorily for any of the purposes of the P.H.A., 1936, by means of a provisional order made by the Minister of Health (*c*). See also titles ACQUISITION OF LAND; COMPULSORY PURCHASE OF LAND; BORROWING. [598]

Refuse Tips.—A local authority are not entitled to tip rubbish on land in such a manner as to cause nuisance on adjoining land to the vendor thereof, who retains the adjoining land, where the tipping can be carried out without nuisance (*d*). A local authority, who undertook the cleansing of cesspools in their district, entered into a contract for the removal of the sewage, and the contractor used the sewage cart of the local authority and deposited the contents upon the land of farmers in the neighbourhood as a result of an agreement made by the contractor. The local authority did not instruct the contractor where to deposit the cesspool contents, but they were held liable to an injunction and in damages for a nuisance caused by the deposit of filth by the contractor upon land belonging to the plaintiff without his consent (*e*). An injunction was granted in a case (*f*) where the local authority discharged snow, street sweepings, and other refuse into a river at a point above the mills of the plaintiffs so as to cause injury to the plaintiffs by the pollution of the river. A perpetual injunction was granted

(*p*) P.H.A., 1936, s. 55; 29 Halsbury's Statutes 366.

(*q*) *Ibid.*, s. 283.

(*r*) *Ibid.*, s. 284.

(*s*) *Ibid.*

(*t*) See *ante*, p. 261.

(*u*) 26 Halsbury's Statutes 457.

(*a*) P.H.A., 1936, s. 76 (2); 29 Halsbury's Statutes 385.

(*b*) *Ibid.*, s. 76 (1).

(*c*) *Ibid.*, s. 306.

(*d*) *Priest v. Manchester Corpn.* (1915), 84 L. J. (K. B.) 1734; 36 Digest 199, 387.

(*e*) *Robinson v. Beaconsfield R.D.C.*, [1911] 2 Ch. 188; 38 Digest 237, 662.

(*f*) *Atkinson v. Huddersfield Corpn.* (1893); *Times*, April 20.

restraining the local authority from tipping refuse on a field so as to cause or occasion any nuisance (g). [599]

Refuse Deposited in Rural Areas.—The practice of one local authority depositing refuse on tips situated within the area of another local authority, either themselves or by a contractor, has grown considerably in recent years, particularly in the vicinity of London, and has led to considerable agitation on the part of local authorities, including county councils, adjoining Greater London. In June, 1922, the Minister of Health held a conference on the disposal of London refuse and subsequently suggested precautions to be taken in connection with refuse tips, which were appended to his Annual Report for 1931–32 (h). These precautions are as follows :

- (1) Every person who forms a deposit of filth, dust, ashes or rubbish, of such a nature as is likely to give rise to nuisance, exceeding
 - (i) cubic yards, must, in addition to the observance of any other requirements which are applicable, comply with the following rules :
 - (a) The deposit to be made in layers.
 - (b) No layer to exceed (k) feet in depth.
 - (c) Each layer to be covered, on all surfaces exposed to the air, with at least nine inches of earth or other suitable substance ; provided that during the formation of any layer not more than (i) square yards may be left uncovered at any one time.
 - (d) No refuse to be left uncovered for more than twenty-four hours from the time of deposit (l).
 - (e) Sufficient screens or other suitable apparatus to be provided, where necessary, to prevent any paper or other debris from being blown by the wind away from the place of deposit.
- (2) Every person who deposits any filth, dust, ashes or rubbish likely to cause a nuisance if deposited in any water must, so far as practicable, avoid it being deposited in water.
- (3) Every person who deposits any filth, dust, ashes or rubbish must take all reasonable precautions to prevent the breaking out of fires and the breeding of flies and vermin on or in such deposit.
- (4) If the material deposited at any one time consists entirely or mainly of fish, animal or other organic refuse, the person making such deposit must forthwith cover it with earth or other equally suitable substance at least two feet in depth.
- (5) Every person who deposits any filth, dust, ashes or rubbish must take all practicable steps to secure that tins or other vessels or loose debris likely to give rise to nuisance are not deposited in an exposed condition on or about the place of deposit.
- (6) Sufficient and competent labour must be provided in connection with the deposit to enable the necessary measures to be taken for the prevention of nuisance.
- (7) So far as practicable, each layer of refuse which has been laid and covered with soil must be allowed to settle before the next layer is added.

(g) *Jones v. Welshpool Corpn.*, (1904) ; *Times*, November 18.

(h) Cmd. 4113, p. 26 and Appendix I. H.M.S.O.

(i) Appropriate figures to be inserted after full consideration of the local conditions. The M. of H. will be glad to advise on this point, and, in any case, to be informed of the figure adopted.

(k) Unless the circumstances are very exceptional, the depth of the layers should not exceed 6 feet.

(l) The object of this is to provide that even the surface which is allowed to remain exposed under the proviso to (c) shall be covered up after 24 hours.

- (8) Wherever practicable, the person making the deposit must avoid raising the surface of the tip above the general level of the adjoining ground.
- (9) All refuse must be disposed of with such dispatch, and be so protected during transit, as to avoid risk of nuisance.

Where the precautions on the lines laid down by the M. of H. have been taken, it has been found possible to dispose of refuse on land without causing nuisance, either from fire, flies, rats or smell. The method, generally known as "controlled tipping," is now widely adopted in many parts of England and Wales. The above precautions apply not only to tips used by local authorities but also to tips used by private persons. [600]

There are no general prohibitory powers preventing the deposit of refuse in any particular area, but the bye-laws referred to in sect. 81 (a) of the P.H.A., 1936 (*m*), relating to the prevention of nuisance from filth, dust, ashes and rubbish, have been used in an attempt to control dumping; and action may also be taken under the nuisance provisions of the P.H.A., 1936 (*n*).

Bye-laws made under sect. 81 (a), *supra*, include the following :

- (1) Every person who shall intend to form in the district a deposit of filth, dust, ashes or rubbish, of such a nature as is likely to cause a nuisance, shall give to the council fourteen days' notice in writing of such intention, which shall be delivered or sent to the Clerk, Surveyor or M.O.H., or to their Sanitary Inspector, at his or their office.
- (2) Every person who forms in the district a deposit of filth, dust, ashes or rubbish, of such a nature as is likely to cause a nuisance, shall comply with the following rules : (similar to those suggested by the M. of H. (o).) [601]

In practice, the above bye-laws have been insufficient to deal with the problem existing around London, and several county councils have obtained private powers. The following section is a typical example (*p*) :

- (1) It shall not be lawful for any authority, body, or person to deposit or otherwise dispose of any refuse in any place within the county other than a place within the county district (if any) in which the refuse was collected or assembled without the consents first obtained in writing of the council and of the local authority of the county district in which such deposit or disposal shall be intended to be made. Provided that this subsection shall not apply :
 - (a) until the expiration of twelve months from the passing of this Act to any deposit of refuse in existence at the passing of this Act, or
 - (b) to the deposit or disposal of sewage by any local or other public authority acting under the powers of any Act of Parliament or order having the force of an Act, or
 - (c) to the disposal of manure at or on a farm, garden or nursery and intended to be used solely for horticultural, agricultural or farming purposes, or
 - (d) to the deposit or disposal of refuse required solely for industrial purposes, or

(*m*) See *ante*, p. 265.

(*n*) SS. 92 *et seq.* ; 29 Halsbury's Statutes 394 ; and see title NUISANCES SUMMARILY ABATABLE UNDER PUBLIC HEALTH ACTS.

(*o*) See *ante*, p. 268.

(*p*) Surrey County Council Act, 1931, s. 94 ; 21 & 22 Geo. 5, c. xxi.

- (e) to the tipping of spoil or refuse by a railway company for the purpose of constructing, widening or maintaining any railway works.
- (2) The council and the local authority of the county district in which such deposit or disposal shall be intended to be made may grant or withhold their consent thereto, or may make the granting of their consent subject to such terms and conditions as they think fit, and may withdraw any such consent previously given. Provided that if the council and the local authority or either of them shall not notify the applicant for any such consent of their decision upon such application within twenty-eight days after receipt thereof, they shall be deemed respectively to have consented thereto unconditionally.
- (3) Any person offending against the provisions of sub-sect. (1) of this section or infringing any of the terms or conditions subject to which a consent under that subsection shall have been granted shall be liable to a penalty not exceeding two hundred pounds and in the case of a continuing offence to a daily penalty not exceeding fifty pounds.
- (4) In this section "refuse" includes trade refuse, house refuse, filth, rubbish, dust and other like matter. [602]

Somewhat similar provisions are included in the Essex County Council Act, 1933 (g), but in a rather more extended form, power being given to deal with three types of dumps, namely :

- (a) A person may dump refuse in accordance with conditions laid down in Part I. of the Third Schedule (r), by simply giving fourteen days' notice in writing to the county and county district councils.
- (b) A person may dump refuse in accordance with conditions laid down in Part II. of the Third Schedule, after obtaining the previous consent in writing of the county and county district councils.
- (c) A person may dump refuse in accordance with conditions laid down in Part II. of the Third Schedule in any area or areas prescribed from time to time by the county council. The conditions contained in Part II. of the Third Schedule constitute a modified form of controlled tipping to suit large-scale dumping.

The county council or county district council may withhold their consent under (b), *supra*, provided that if either council do not notify the applicant of their decision within three months after the receipt of the application, they are deemed to have consented to the deposit of the refuse. Upon giving not less than twelve months' notice, any consent previously given may be withdrawn. An aggrieved person or body has the right of appeal to a special tribunal consisting of three persons appointed respectively by the President of the Institution of Civil Engineers, the President of the Chartered Surveyors' Institution and the President of the Royal Sanitary Institute. If any person offends against the provisions of the Act, a penalty not exceeding £200 may be imposed and, in the case of a continuing offence, a daily penalty not exceeding £50. The term "refuse" means trade refuse, house refuse, filth, rubbish, dust or other like matter.

With the passage of the above Act, bye-laws made by county district councils relating to nuisances arising from refuse dumps were repealed (s). [603]

Nuisance may also arise as a result of the transport of refuse from

(g) S. 146; 23 & 24 Geo. 5, c. xiv.

(r) Conditions being similar to those suggested by the M. of H., see *ante*, p. 268.

(s) Essex County Council Act, 1933, s. 156.

one district to another, but the court refused to grant an injunction against a railway company for an alleged nuisance arising from smells proceeding from open trucks loaded with house refuse which were allowed to stand some hours at a junction, on the ground that there was no remissness on the part of the company in the forwarding of the trucks, and that they were acting reasonably in carrying the refuse to the junction and detaining it there (*t*). On appeal the case was settled upon an undertaking being given to put special coverings on the trucks and not to detain them in ordinary circumstances for a period exceeding two and a half hours. [604]

Erection of Buildings on "Made" Ground.—A local authority must reject the plans of a new building or extension thereto proposed to be erected on any ground which has been filled up with any matter impregnated with faecal or offensive animal, or offensive vegetable, matter, or upon which any such matter has been deposited, unless and until such matter has been properly removed or has been rendered or become innocuous (*u*). [605]

Depositing Refuse into Streams.—Any person who deposits the solid refuse of any manufactory, manufacturing process or quarry, or any rubbish or cinders, or any other waste or any putrid solid matter, into any stream so as to interfere with its flow or cause pollution, is guilty of an offence (*a*). See title POLLUTION OF RIVERS. [606]

APPOINTMENT OF OFFICERS AND WORKMEN

Officers.—The control of the public cleansing service may be placed in the hands of one of a number of different officers of the local authority. In the larger towns the work is done by a separate department, under the control of an executive officer, usually designated either as "Director of Public Cleansing" or "Cleansing Superintendent." In a few cases the title "General Manager" is used. In other districts, particularly those areas with populations of less than 75,000, the control of the service usually forms part of the duties of either the sanitary inspector or surveyor. Less frequently, it forms part of the duties of the manager of the transport department. [607]

Part IV. of the L.G.A., 1933 (*b*), contains the powers relating to the appointment of officers of a local authority. The various officers who must be appointed are enumerated, including a sanitary inspector and surveyor. A local authority are not bound to appoint an officer specially for the control of the public cleansing service, but they may do so if they consider it necessary for the efficient discharge of their duties (*c*). The power of appointment is vested in the local authority, but in practice it is usual for the powers of the authority to be delegated to a committee (*d*) or sub-committee (*e*), who would be empowered to

(*t*) *A.-G. v. S.E. & C. Rail. Co.'s Management Committee* (1902), 24 M. C. C. 343.

(*u*) P.H.A., 1936, s. 54; 29 Halsbury's Statutes 365.

(*a*) Rivers Pollution Prevention Act, 1876, s. 2; 20 Halsbury's Statutes 316.

(*b*) 26 Halsbury's Statutes 358.

(*c*) L.G.A., 1933, ss. 106, 107; 26 Halsbury's Statutes 361, 362.

(*d*) *Ibid.*, s. 85; *ibid.*, 352.

(*e*) P.H.A., 1936, s. 273; 29 Halsbury's Statutes 498.

make the appointment. In some cases all appointments are made by a Staffs or Establishment Committee, which is concerned with all matters connected with the staff of the local authority, including appointment, dismissal, salaries and wages, and working conditions. See title **APPOINTMENT AND DISMISSAL OF OFFICERS**. [608]

Workmen.—Sects. 106 and 107 of the L.G.A., 1933 (f), enable a local authority to appoint such officers as they consider necessary for the efficient discharge of their duties, and for that purpose they may appoint workmen in connection with the removal and disposal of refuse and the emptying of earthclosets, etc. See titles **STAFF AND WORKMEN**; **WORKMEN'S COMPENSATION**. [609]

COSTING OF THE PUBLIC CLEANSING SERVICE

It has been estimated that nearly £8,000,000 is spent annually on the collection and disposal of house and trade refuse, and a further £4,000,000 on street cleansing and watering. In March, 1925, a report (g) was issued by the M. of H. of the findings of a conference of financial and cleansing officers on the methods of keeping costing accounts. The importance of accurate data was emphasised, particularly in regard to the quantity of refuse dealt with. Wherever possible, all refuse should be weighed, but if this is not practicable, regular periodical test weighings should be taken, at varying seasons of the year, in order to obtain as accurate an estimate as possible of the quantity of refuse dealt with in any given period. [610]

Collection and Disposal of House and Trade Refuse.—The table of costs should show, separately for collection and disposal, and inclusive and exclusive of depreciation and loan charges, the gross expenditure and income, and the net cost. The unit costs should show the net cost per ton of refuse collected; net cost per 1,000 population; and net cost per 1,000 houses or premises from which refuse is collected. The net cost, expressed as an equivalent rate in the pound, may also be given. [611]

Street Cleansing and Watering (h).—The table of costs should show, separately for street cleansing (including watering) and gully cleansing, and inclusive and exclusive of depreciation and loan charges, the gross expenditure and income, and the net cost. The unit costs should show the net cost per 10,000 square yards cleansed and per 1,000 gullies emptied. The rate poundage may also be shown. [612]

Monthly Costing Statement.—The following monthly statement of cost was recommended by the conference as a suitable method of presenting regularly the cost of the public cleansing service. By the adoption of a statement on the lines indicated, comparison is possible between given periods, and any abnormal increase in expenditure is quickly apparent and can be investigated without delay. [613]

(f) 26 Halsbury's Statutes 361, 362.

(g) Report of a conference appointed by the Minister of Health to consider methods of keeping costing accounts, March, 1925.

(h) As to street cleansing, see title **SCAVENGING**.

CLEANSING SERVICE

Monthly Statement of Cost

Month ended 19 .

	Current Figures.	Figures for corresponding period of previous year.
HOUSE AND TRADE REFUSE		
<i>Collection</i>		
Gross expenditure per month - - -		
Gross expenditure per month per ton for month* - - -		
Actual net cost to end of month - - -		
Estimated net cost for the year - - -		
Collected during month (in tons) - - -		
Collected per 1,000 of the population per day † (in cwts) - - -		
<i>Disposal</i>		
Gross expenditure for month - - -		
Gross expenditure per ton for month * - - -		
Total income for month - - -		
Actual net cost to end of month - - -		
Estimated net cost for the year - - -		
STREET CLEANSING		
<i>Street Sweeping and Watering</i>		
Gross expenditure for month - - -		
Gross expenditure per 10,000 sq. yds. for month* - - -		
Actual net cost to end of month - - -		
Estimated net cost for the year - - -		
No. of sq. yds. of streets cleansed (in 1,000's)		
<i>Gully Cleansing</i>		
Gross expenditure for month - - -		
Gross expenditure per 1,000 gullies for month* - - -		
Actual net cost to end of month - - -		
Estimated net cost for the year - - -		
No. of gullies cleansed - - -		

* Unit costs should be given to nearest penny.

† To be calculated on basis of 6 ordinary working days to the week.

LONDON

Under sect. 87 of the P.H. (London) Act, 1936 (*i*), the sanitary authorities (City corporation and metropolitan borough councils) are under a duty to remove house refuse at proper periods or on forty-eight hours' written notice from an occupier. A fine not exceeding £20 may be imposed on the sanitary authority for failure without reasonable cause to comply with the section. Servants or contractors demanding fees or gratuities for the removal of house refuse are liable to a fine not exceeding 20s.

If the sanitary authority neglects to remove house refuse for seven days the occupier, on giving twenty-four hours' notice to the sanitary authority, may sell or give away the refuse (sect. 88). Persons may

remove refuse in consequence of such a sale or gift (sect. 88), or by purchase from a sanitary authority, but any other person other than the sanitary authority removing refuse is liable to a fine not exceeding £5 (sect. 91). Refuse removed by a sanitary authority becomes the property of the authority, who may sell and dispose of it as they think proper (sect. 91). [614]

Under sect. 89 every person who removes refuse between 10 a.m. and 7 p.m. from any dwelling-house in streets designated by the Commissioner of Police shall be liable to a fine not exceeding 40s.

By sect. 90 every sanitary authority must employ a sufficient number of scavengers or contract with scavengers for (*inter alia*) the removal of house refuse.

On request by an owner or occupier of premises the sanitary authority are under an obligation to remove trade refuse on payment of fees, the amount of which, if in dispute, shall be settled by a petty sessional court. The question of what is trade refuse may also be settled by a petty sessional court, whose decision is final (sect. 92).

[615]

Where accumulations of manure, filth, etc., which it is not the duty of the sanitary authority to remove, ought, in the opinion of the sanitary inspector, to be removed, he shall serve a notice on the owner of the obnoxious matter or occupier of the premises on which it exists to remove the same, and if the notice is not complied with in forty-eight hours the sanitary authority becomes the owner of the obnoxious matter and may remove it, the expenses of removal being met out of the proceeds of the disposal, the surplus (if any) being repayable to the former owner on demand, or, if the cost exceeds the proceeds, being recovered from the former owner or from the occupier, or where there is no occupier, the owner of the premises from which it was removed (sect. 93). [616]

Sanitary authorities may employ or contract with scavengers for removing refuse from stables and cowhouses, the owners of which consent in writing to such removal. Such consent can only be withdrawn after one month's notice, and these arrangements do not relieve any person from fines for placing dung or manure upon a street or for keeping accumulations of manure, etc. The sanitary authority may, by public notice or otherwise, require the periodical removal of manure and refuse from stables, cowhouses, etc. Failure of an owner to comply with the notice involves a daily fine (sect. 94).

As to definitions of "house refuse," "trade refuse," etc., see sect. 304. [617]

By sect. 197 any person knowingly throwing or allowing to be thrown into an ashpit any rubbish infected by a dangerous infectious disease without previous disinfection shall be liable to a fine. The section also contains provisions as to the removal and disinfection or destruction of the rubbish in question.

A borough council may borrow for the purpose of the provision of premises, wharves, destructors, plant and equipment for the collection, removal and disposal of refuse (sect. 90).

Under sect. 36 of the L.C.C. (General Powers) Act, 1927 (*k*), bye-laws made by metropolitan borough councils under the Act for dealing with street trading are to include provisions as to the disposal and removal of refuse and as to the charges which the borough council

may make for these and other services. Under sect. 37 power is given to the councils to make such charges. [618]

Under sect. 10 of the London Traffic Act, 1924 (*l*) (as amended by the London Passenger Transport Act, 1933, sect. 63 (*m*)), the Minister of Transport has made regulations as to the conditions and times of using vehicles in streets for collecting refuse. This does not, however, apply to street refuse (*n*). [619]

Sect. 18 of the Port of London (Various Powers) Act, 1932 (*o*), prohibits (under a penalty not exceeding £20 and a daily penalty not exceeding £10) the burning of refuse, etc., within one mile of the River Thames within the Port of London so that annoyance or danger is caused by smoke to vessels on the river. [620]

(*l*) 19 Halsbury's Statutes 183.
(*n*) S.R. & O., 1931, No. 27.

(*m*) 26 Halsbury's Statutes 804.
(*o*) 25 Halsbury's Statutes 789.

REGIONAL PLANNING

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See also titles :

BETTERMENT ;	TOWN PLANNING AGREEMENTS WITH
COMPENSATION FOR TOWN PLANNING ;	OWNERS ;
OPEN SPACES ;	TOWN PLANNING AUTHORITIES ;
TOWN AND COUNTRY PLANNING ;	TOWN PLANNING SCHEMES.

Introduction.—Although a regional scheme is mentioned in sect. 9 of the Town and Country Planning Act, 1932 (*a*) (and there only), and is given a special definition in the section, as being a scheme made by a joint committee, the term regional planning has by custom been accepted as meaning advisory planning proposals prepared for wide areas in preparation for the statutory planning schemes which will be based upon it. Thus sect. 9 of the Act, which has every appearance of being an afterthought, evidently contemplated statutory planning by two stages : an outline regional scheme first, followed by detailed supplementary schemes for the whole or part of the regional scheme. So far no attempt has been made to work this section although Sir Gwilym Gibbon, in Chapter V. of his book (*b*), shows the desirability of this procedure.

(*a*) 25 Halsbury's Statutes 481.

(*b*) "The Problems of Town and Country Planning," George Allen and Unwin 5s. net.

Regional planning, as generally understood, is of an advisory character and is intended as a general study of the requirements of a district and suggestions as to the best means of meeting them: it is not unduly trammelled by legal expedients (e.g. it may deal with matters usually outside the scope of the Planning Act, such as railways, afforestation, ancient monuments, for which other Acts are used), and it is thus in a position to create a synthesis of all matters affecting environment and growth; nor is it concerned immediately with the boundaries of the administrative areas of local authorities, or of the areas of private land ownership, at any rate so far as these affect planning proposals. The optimum plan for the district is prepared. This does not mean that the proposals are idealistic or impracticable, but that they are not conceived of in the first instance in terms of restrictions. The regional plan is, of course, controlled by broad financial considerations, which tend to keep it within the realm of practical realisation. At this stage, too, the regional plan can be brought into touch with business and industrial requirements which, not being either administrative or necessarily land-owning interests, may tend otherwise to be somewhat neglected under purely statutory planning. [621]

Joint Committee.—Although the regional plan has thus the freedom of scope of an advisory status, it has usually been prepared by a statutory joint committee of local authorities, who decide to prepare it as a first stage towards statutory planning. Thus, though advisory, it is prepared for a statutory committee set up under the Town and Country Planning Act, 1932 (or one of its predecessors): the plan is duly approved by the joint committee and is henceforth available for guidance to local authorities in preparing their planning schemes, and to the Minister of Health, in order that he may see that co-ordination is observed, and to test how far the statutory schemes adhere to or depart from the advisory plan. The legal machinery and financial arrangements of these joint committees are exactly the same as for statutory planning.

It by no means follows, however, that the same joint committee that prepared the advisory plan prepares the statutory schemes. In the Manchester region, for example, the committee which prepared the regional plan split up into fourteen joint committees for the statutory preparation stage: the original committee, however, continues to function in a general advisory capacity. In the North Riding of Yorkshire, the advisory plan was prepared by the county council alone, the same authority preparing several statutory planning schemes for the same area. The extension of statutory powers to the county councils (by the L.G.A., 1929) has had considerable influence in bringing them into the sphere of regional planning: in some of the earlier examples the county councils were represented by co-opted members. [622]

Types of Regional Plan.—One of the chief advantages of the regional plan has been the freedom given in the selection of areas. Under the guidance of Mr. G. L. Pepler (of the M. of H.) these have been selected with an eye to a geographic unity and have in many cases transcended the age-old boundaries of our counties. In the Bath and Bristol region, for example, it was essential that parts of the counties of Somerset and Gloucester should be included, as for a considerable distance the Avon is the boundary between them. In the Manchester

plan parts of Lancashire and Cheshire were included, and the Birmingham region contained portions of three counties. On the other hand, single counties such as Berkshire, East Suffolk, Oxfordshire and the North Riding, have proved to be the most convenient units for a regional plan. [623]

The following may be taken as the grouping into which the regional plans which have been so far prepared naturally fall :

(i.) *Conurbations, or closely Associated Towns*, where the chief problem has been the paradox of separation and connection. Separation by means of some sort of green belt in order to prevent complete coalescence and to provide agricultural land nearby and adequate playing fields : Connection by means of inter-urban communications and bypasses. There is also the more advanced idea of the logical grouping of communities according to their more specialised functions. For example, in the Chester and Dee-side regional plan it was agreed that the heavy industries should be kept out of the area of the City of Chester and grouped further down the Dee at Queensferry. The regional plans of areas like those of Manchester and Birmingham were the pioneers of direct traffic routes to avoid passing through the centres of towns ; or where one town such as Manchester formed a metropolis, to allow the encircling towns, such as Bolton, Rochdale, Oldham, etc., to have direct inter-communication without going in and out of Manchester. [624]

(ii.) *New changing areas*, caused by some suddenly introduced factor, such as the discovery of coal or iron ore. Here a forecast of future population and its relations to the existing occupation of the region provides the problem, which becomes acute when the new use may, unless carefully controlled, damage an existing one ; e.g. when coal was discovered in East Kent, whose two staple industries were agriculture and seaside recreation, the regional plan showed that the rateable value (c) likely to accrue through the mines would never have equalled that existing in the seaside towns. In the Doncaster regional plan it was shown that the form of growth, both natural and desirable, should be in the form of a series of satellite communities, each with its coal pit and industrial zone, surrounding the old town of Doncaster. [625]

(iii.) *Wide rural areas*, in which the encouragement of agriculture and the preservation of rural amenities may be the chief concern. Here, too, the provision of water supply and drainage to villages can be related to the release of land for building, in order that what growth there is shall be properly supplied with services and shall not, through straggling or ribbon development, lead to unduly expensive or premature services. Villages are studied in relation to their likelihood or fitness for growth and are allotted a certain amount of land for " free entry " building. Where growth may be anticipated, a further amount of potential building land is subject to a temporary restriction as to its use for building (d). [626]

(iv.) *National park areas*, where some heightened quality of natural beauty requires quite special treatment in order to preserve some effect which might be lost, even under normal good development. Here many aspects of first-rate importance are at present outside the

(c) Or its equivalent through the block grant.

(d) This method of periodic release of land for building is dealt with under statutory planning schemes, see ss. 15, 16 of the Act ; 25 Halsbury's Statutes 488, 489.

scope of statutory planning, but their consideration from the national park point of view will affect the planning schemes: afforestation, electric cable lines, quarrying and mining, water impounding, etc. The three principal objects of a national park require to be harmonised—existing agricultural or other occupation; national recreation, requiring additional access and accommodation; the provision of sanctuaries for flora and fauna. It is clear that careful preliminary planning is required if these three objects are to be reconciled. Regional advisory plans have been prepared for Snowdonia and for two-thirds of the Lake District. It is unfortunate that the latter has not been considered as a unit for regional planning. Coastal preservation schemes come also under this category: the principal examples of regional plans including coastal areas are those prepared for Cornwall and Somerset. The Cornish plan was prepared for the Council for the Preservation of Rural England, otherwise it is precisely the same as those prepared for local authorities. (e) [627]

(v.) *The London area.* This has called for special treatment and in a sense has been twice regionally planned, once by a series of large sub-regional plans, which have dealt chiefly with the outer area, and secondly by an advisory committee and officer set up first under Sir Raymond Unwin (succeeded by Major Hardy Syms) in order to prepare guiding lines and to co-ordinate the statutory planning of the numerous authorities of Greater London. This advisory committee produced several sectional reports, but was not able, for various reasons, to prepare an outline regional plan for the whole area. The office was closed in 1937 and there is now an advisory committee, without a plan. [628]

Effect of Regional Plans and Reports.—These advisory plans have usually been published, accompanied by a report. It has been recognised that as they have no statutory backing, their strength must rely on the weight of public opinion. This has been obtained by making the proposals well known and accessible. The series of published reports form one of this country's best and largest contributions towards modern planning. Though prepared by different authors, the reports and plans follow a regular form and contain, in addition to the proposals, a brief topographic history and a reasoned justification for the plan.

The first parts of these reports, the justification of the planning proposals, take the form of regional surveys. There is perhaps not a great deal of original research displayed in them, but a carefully selected mass of material presented in such a way as to be readily grasped and applied. The sources are either of national origin, *e.g.* geological, survey, rainfall, population and occupational statistics, etc., or of local origin, *e.g.* water supply, disposal of sewage, accessibility to means of transport, housing conditions, etc. Perhaps the reports have been weakest in the direction of agricultural survey, owing to the fact that the data as to soils and land potentialities are not available. On the other hand, an original contribution in some reports is an evaluation of landscape beauty, having a direct bearing upon building operations and the work of the C.P.R.E. and the National Trust. [629]

These advisory plans and reports have acted as propaganda for the preparation of statutory planning schemes. It is difficult to estimate

(e) See the Report of the National Park Committee, 1931, Comd. 3851, and title OPEN SPACES, Vol. X, p. 40.

the extent to which these differ from the proposals in the advisory reports, but it is feared that a considerable process of watering down is occurring: (i.) because the powers of the Act are insufficient; (ii.) because, owing to the incidence of private ownership, compensation must be paid to obtain bold effects (*e.g.* open spaces and green belts), and the machinery for the payment by one authority (*e.g.* the rich town) for features lying within the area of another (*e.g.* the less wealthy country area) is not very well devised; (iii.) because, whereas compensation is demonstrable and claimable, betterment is extremely difficult, if not impossible, to collect; (iv.) owing to the parochialism of certain local authorities who are more intent upon increasing their rateable value than in devising a wholly satisfactory pattern of regional development. It is here that the weakness of the advisory regional planning is apparent, and although the statutory schemes may be prepared by joint committees which may coincide with the region, the plan which ultimately emerges may be very different. [630]

National Planning.—There is a direct relationship between the sum of regional planning schemes and national planning. Although advisory plans have not been prepared for the whole country (those regions that present none of the more particularly acute problems of planning have not felt the need for advisory plans), a piecing together of all the advisory plans so far prepared would be a first step towards a national plan. This is perhaps not the strictly logical sequence, which should proceed from the national through the regional to the local scale. The gaps in advisory planning are in many cases being filled in by joint statutory planning which is of sufficiently general a character to admit of the superimposition of features of national import.

At present there is a considerable amount of planning on a national basis, but it presents the very unsatisfactory characteristic of being carried out almost wholly in watertight compartments. The achievement in single directions may be great, but there has not been a consistent attempt to weld them together into a single composite plan which can unite and give general direction to the regional groups already in existence. Trunk roads, or rather routes, to take the most obvious instance, are suddenly imposed upon a statutory scheme, nearing completion: the whole balance of the plan may be upset and years of work and negotiation lost. This is not the place to describe the possible headings under which national direction to local planning should be organised; but the location of industry, which is being examined by a Royal Commission, is obviously of primary importance. The advisory work so far accomplished on a regional scale, is a preparation for the wider approach, which should provide the outline pattern within which statutory authorities could fit their local schemes. [631]

Sketch Development Plan.—One further aspect of advisory planning must be mentioned, concerned primarily with local planning, but aiming at fitting it within the regional framework. This is the sketch development plan which many towns, more especially the large ones, are finding it necessary to prepare, in order to give some coherence to their statutory planning. This began under the 1909 and 1919 Acts with a ring of suburban schemes, but recently the slum clearance movement has necessitated a reconsideration of the whole question of the working and living quarters of the town, to give effect to such factors as the reduction of central densities, re-housing in large units on the outskirts—leading, as at Wythenshawe near Manchester, to a

form of satellite growth: the converse, a green belt, putting a period to continuous urban spread: and the closely interlocked problems of central improvements involving re-arrangement of traffic, parking places, bus centres, markets, shopping areas and civic centres. All these aspects have caused many towns to pause in their statutory planning and to prepare an advisory plan for their whole area and for the surrounding country. Their local planning is thus once again brought into the framework of regional planning, in this case the motive force being the remodelling of their built-up central areas. [632]

REGISTER OF ELECTORS

See REGISTRATION OF ELECTORS.

REGISTERED HOSPITALS

See LICENSED HOUSES AND HOSPITALS.

REGISTRAR-GENERAL

See REGISTRATION OF BIRTHS, DEATHS AND MARRIAGES.

REGISTRATION OF BIRTHS, DEATHS AND MARRIAGES

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*See also titles : CENSUS ;
SUPERANNUATION.*

Introduction.—The subject-matter, which in regard to marriage goes considerably beyond the province of registration, represents the grouped functions of a system consisting of a service of local registration officers supervised by the Registrar-General.

The country is divided into a series of registration districts, each with a local register office, a superintendent registrar and one or more registrars of marriages. Each district is divided into sub-districts, for each of which there is a registrar of births and deaths.

The following abbreviations are used in this article : B. & D.R. Act for Births and Deaths Registration Act ; M. Act for Marriage Act ; S.R. for superintendent registrar ; R.B.D. for registrar of births and deaths ; R.M. for registrar of marriages ; G.R.O. for General Register Office. [633]

Registration of Births and Deaths.—Births and deaths are registered by the R.B.Ds. for the sub-districts in which they occur, on the information of a person qualified and liable by law to attend for the purpose. The registration of deaths involves a number of supplementary duties in relation both to coroners and to the disposal of bodies. [634]

Marriages.—The service administers the whole system of marriage outside the Church of England. Buildings previously certified to the Registrar-General as places of religious worship may be registered by him, upon application through the local S.R., for the religious solemnization of marriages. Civil marriages, *i.e.* those without any religious

ceremony, may be celebrated in the local register office. Marriages of either kind are preceded by "civil preliminaries," commencing with notice for marriage by the parties to the S.R. The notice when accepted is entered in a notice book open to public inspection and, if the marriage is not to be by licence, publicly exhibited in the register office. After the lapse of one day in the case of marriage by licence, and twenty-one days in other cases, the S.R. issues his certificate for the marriage, which may then take place in the registered building or register office subject to the statutory requirements. [635]

Registration of Marriages.—Marriage registers are supplied by the Registrar-General to the incumbents of parish churches and licensed chapels of the Church of England, to R.Ms. and to any person (usually the minister of a nonconformist chapel) who may be authorised to register marriages under the M. Act, 1898 (a). Marriages in a registered building or register office must be registered by a R.M. of the district present in person or, in the former case, by the authorised person, if any. [636]

Records.—Copies of entries in the birth, death and marriage registers are made each quarter by R.B.Ds., R.Ms., clergymen of the Church of England and authorised persons, and transmitted through the S.R. to the Registrar-General. These copies, certified by the S.R., clergyman or authorised person, as the case may be, are taken into the official records of the G.R.O., where indexes may be searched and certified copies supplied which are by law receivable in evidence in any legal proceedings. Birth and death registers and the marriage registers kept by R.Ms. are deposited, when full, in the local register office. When the marriage register (which is kept in duplicate) of a Church of England clergyman or an authorised person is filled, one of the duplicates is deposited in the local register office. Each district register office is thus a local repository of birth, death and marriage registers, at which searches may be made and certified copies supplied.

Certified copies, *i.e.* birth, death or marriage certificates, are thus obtainable at both the local register office and the central G.R.O. In addition, copies may be supplied by the registering officer, the R.B.D. or the R.M., of entries in the register in his custody before its deposit in the register office. [637]

Census-taking : Statistics.—These activities differ from the foregoing both as regards their relation to the local service and their points of contact with local government. They are dealt with separately later. [638]

Functions of the Local Authority.—These relate to the service itself, *i.e.* its personnel, remuneration, offices, organisation, areas, etc., and not to the subject-matter of the service.

The constitution of this service, though comprising local authority functions, is not of the ordinary pattern of local government administration under the general supervision of a central authority. Registration officers are statutory officers, not, as such, in the employment either of the Crown or of a local authority. Their functions are determined by detailed statutory provisions amplified further by regulations of the Registrar-General, by whom any necessary directions are given in particular cases. The Registrar-General, himself a statutory

officer, is in some respects a part of the registration service, having executive functions complementary to those of the local officers, as well as functions of a purely supervisory character, and the general responsibility which they entail. The general position appears to be that the Registrar-General is responsible to the Minister of Health and through him to Parliament for the satisfactory conduct of the registration service, except in regard to matters depending upon the exercise of functions conferred by statute upon the local authority.

Before the L.G.A., 1929, the functions of the local authority, viz. the board of guardians, were those originally conferred by the B. & D.R. Act, 1836. Upon the transfer to county and county borough councils of all the guardians' functions, their registration functions were in some respects amplified and re-cast. In dealing below with the several heads under which these functions fall to be treated, reference will be made both to the pre-1929 Act position and to the changes effected by that Act, for the following reasons. [639]

Relation of Schemes to the Pre-existing Law.—In one respect the L.G.A., 1929, expressly amended the earlier Acts by the specific substitution of salaried remuneration for the fee-earning system, though even here the old system is kept alive for an expiring class of officers. But other changes were introduced by means of provisions (*b*) requiring a scheme dealing with certain matters to be prepared by the authority for the Minister's approval. The approved scheme amends the B. & D.R. Acts and M. Acts (*c*) with respect to any matter with which it is entitled by the section to deal. The pre-existing law remains in force except so far as varied by the scheme; and while sect. 24 requires certain matters to be dealt with in a scheme, it permits of much latitude both as to the manner and the extent of the scheme's provisions. [640]

Who is the "Responsible Council" ?—Prior to the operation of the L.G.A., 1929, the local authority was a board of guardians. As the earliest registration district was coterminous with the union, parish or place for which a board of guardians had been established, the functions in regard to that district were discharged by that board of guardians. Upon the union of two or more such districts under sect. 10 of the B. & D.R. Act, 1837 (*d*), the Registrar-General was empowered to declare by which board the functions were to be discharged.

Upon the transfer of these functions by the L.G.A., 1929, to county and county borough councils, the case of a district overlapping two or more council areas was met, pending the operation of schemes, by a provision (*e*) that the council of the area estimated by the Registrar-General to contain the larger or largest part of the population of the district should be responsible for the discharge of the functions in the district as a whole. By the proviso to sect. 21 (2) of the Act, if, by an order of the Registrar-General, in exercise of the powers of alteration below referred to, a portion of an overlapping district situated in the area of a council not charged with the functions is made into a separate district, the order may transfer the functions respecting such new district to the council in whose area it is situated. By sect. 22 (5) the

(*b*) S. 24; 10 Halsbury's Statutes 900.

(*c*) S. 24 (2) (6).

(*d*) 15 Halsbury's Statutes 713.

(*e*) S. 21 (1) (b); 10 Halsbury's Statutes 898.

term "responsible council" in regard to any registration officer is applied to the council discharging the transferred functions in relation to the district or sub-district in which the officer acts. Upon the operation of a scheme, districts overlapping the area of the scheme are eliminated, and the responsibility of the council of the area becomes co-extensive with the group of districts into which the area is sub-divided. [641]

Areas.—The B. & D.R. Act, 1836, made the areas of registration districts identical with the areas of the newly established boards of poor law guardians. The union, parish or place in which a board of guardians was established was to be a registration district, and to be sub-divided by the guardians into sub-districts for the registration of births and deaths (*f*). The B. & D.R. Act, 1837, empowers the Registrar-General, with the approval of the Minister of Health, to unite any two or more S.R.s' districts into one S.R.'s district (*g*), and to divide any S.R.'s district into two or more such districts (*h*). Sect. 21 of the B. & D.R. Act, 1874 (*i*), empowers the Registrar-General, with the sanction of the Minister of Health, to alter sub-districts by the alteration of their boundaries, by the union of sub-districts or the creation of new ones, provision being made for the compensation, under the Acts relating to the relief of the poor, of any S.R. or R.B.D. who might suffer loss of office or emoluments by such changes.

These powers were sparingly exercised in regard to S.R.s' districts, in view of the close relation between such a district and the particular board of guardians by whom the functions fell to be discharged in it. With regard to sub-districts, *i.e.* the internal sub-division of a district, these were frequently altered in order to adjust them from time to time to the needs of a growing or shifting population. [642]

The L.G.A., 1929, made the county or county borough council primarily responsible for the lay-out of districts and sub-districts within their area. Sect. 24 (*k*) provides that the scheme of the council should divide the whole of the county or county borough into registration districts and sub-districts; and these on the approval of the scheme by the Minister take effect in substitution for the pre-existing lay-out.

The transition from a series of districts of which many overlapped county and county borough boundaries has been complicated by the impossibility of bringing the schemes of all councils into simultaneous operation. County councils seldom appear to have been able to formulate their lay-out of registration areas until they have completed their review of county districts under sect. 46 of the Act (*l*): hence, some councils have been able to proceed in advance of others. As overlapping districts are broken up by a scheme for the area which includes a part of them, the necessary re-arrangement of the remaining portions in adjacent areas without schemes has been effected by order of the Registrar-General under the powers above mentioned. [643]

Officers. Number.—The B. & D.R. Acts and the M. Acts require that there should be a superintendent registrarship in each district and a registrarship of births and deaths in each sub-district. The

(*f*) S. 7; 15 Halsbury's Statutes 701.

(*h*) S. 11.

(*k*) 10 Halsbury's Statutes 900.

(*l*) *Ibid.*, 916 (now s. 146 of the L.G.A., 1933; 26 Halsbury's Statutes 384).

(*g*) S. 10; *ibid.*, 713.

(*i*) 15 Halsbury's Statutes 744.

existence of one such office only corresponding to each such area has arisen not only from the original fee-system but also from certain basic features of the registration system itself. Sect. 22 of the B. & D.R. Act, 1837 (*m*), authorises the Registrar-General to fix from time to time the number of R.Ms. in each district.

Each S.R., R.B.D. and R.M. is required to appoint, subject to the Registrar-General's approval, a deputy to act in his absence, for whose acts and omissions he is civilly responsible. Upon a S.R. or R.B.D. vacating office, his deputy becomes interim registrar, with all the duties and obligations of the office, until a successor is appointed. Similarly, the deputy of a R.M. takes the place of his principal until a new appointment is made (*n*).

The scheme under sect. 24 of the L.G.A., 1929, is to determine the number of S.Rs., R.B.Ds., R.Ms. and other officers required for the purpose of the "Registration Acts" (*o*); and is to provide, where two or more officers are appointed to act for a single district or sub-district, for the distribution between them of the duties of the office in that area. [644]

Qualifications.—S.Rs., R.B.Ds. and R.Ms. must possess such qualifications for appointment as may be prescribed by the Registrar-General (*p*). The prescribed rules as to qualifications are included in the Registrar-General's Consolidated Regulations (*q*), and are chiefly concerned with good character, limits of age on appointment, and the disqualification of persons holding other specified offices or following specified kinds of employment treated as incompatible with the tenure of registration office. No educational qualification is prescribed. A deputy must be "a fit person." [645]

Appointment.—The "responsible council" has the duty of appointing to a vacant superintendent registrarship or registrarship of births and deaths within fourteen days of the occurrence of a vacancy, after which period the appointment lapses to the Registrar-General (*r*). A R.M. may be appointed by the S.R. in writing, subject to the Registrar-General's approval, or by the Registrar-General (*s*). [646]

Tenure.—S.Rs. and R.B.Ds. hold office during the pleasure of the Registrar-General, who must give notice by local advertisement of his removal of any officer (*t*). R.Ms. hold office during the pleasure of the S.Rs. by whom they were appointed, or of the Registrar-General (*u*). A deputy holds office during the pleasure of the registrar by whom he was appointed, but is removable by the Registrar-General (*a*).

A S.R. or R.B.D. who is subject to the provisions of the Poor Law Officers' Superannuation Act, 1896, or the Local Government and other Officers' Superannuation Act, 1922 (as applied by sect. 124 of the

(*m*) 15 Halsbury's Statutes 716.

(*n*) B. & D.R.A., 1874, s. 25; 15 Halsbury's Statutes 745; and M.A., 1856, s. 16; *ibid.*, 730.

(*o*) L.G.A., 1929, s. 24 (1) (b); 10 Halsbury's Statutes 900.

(*p*) B. & D.R.A., 1836, s. 7; 15 Halsbury's Statutes 701; and M.A., 1836, s. 17; 9 Halsbury's Statutes 341.

(*q*) S.R. & O., 1927, No. 485; 15 Halsbury's Statutes, 775.

(*r*) B. & D.R.A., 1836, s. 7; 15 Halsbury's Statutes 701; B. & D.R.A., 1837, s. 14; *ibid.*, 715.

(*s*) M.A., 1836, s. 17; 9 Halsbury's Statutes 341; M.A., 1856, s. 15; 15 Halsbury's Statutes 729.

(*t*) B. & D.R.A., 1836, ss. 7, 8; 15 Halsbury's Statutes 701, 702.

(*u*) M.A., 1836, s. 17; 9 Halsbury's Statutes 341.

(*a*) M.A., 1856, s. 16; 15 Halsbury's Statutes 730; B. & D.R.A., 1874, s. 24; *ibid.*, 744.

L.G.A., 1929 (*b*)), is liable to retirement by the authority under those provisions. [647]

R.Ms.—This class of officers is on a somewhat different footing from R.B.Ds. Under the pre-1929 law they are not superannuable or entitled to any compensation for loss of emoluments, and they have no claim to any particular volume of business. Sect. 123 of the L.G.A., 1929 (*c*), as to compensation in respect of loss suffered in virtue of that Act, applies, however, to R.Ms.

Under para. (d) of sect. 24 (1) of the Act, a scheme is to provide for conferring upon R.B.Ds. all or any of the functions of R.Ms. It is thus made possible for the latter class of officers to be extinguished by the merging of their functions with those of the R.B.Ds. [648]

Offices.—For each district the council is to “provide and uphold” a register office according to a plan approved by the Registrar-General; and the S.R. is to have the care of this office and the custody of the registers deposited therein (*d*). Pending such provision the S.R. shall appropriate “some fit room” approved by the Registrar-General as a temporary register office, the council to pay “a reasonable rent” to the S.R. (*e*). Sect. 20 of the B. & D.R. Act, 1837 (*f*), enables the Treasury to provide and uphold a register office at the expense of the authority in the event of its default or refusal. For the purposes of the B. & D.R. Acts and M. Acts, the register office of a district is to be deemed to be within the district, though not locally situated therein (*g*).

A R.B.D. (and his deputy) must dwell in or have a known office within the sub-district and must attend there on days and at hours approved by the Registrar-General (*h*). If directed by the Registrar-General he must appoint stations at which to attend, such stations being deemed to be his office for registration purposes (*i*).

The scheme under the L.G.A., 1929, is to determine the location of offices and stations; and the powers which a scheme is required to confer on the clerk to the council must include powers with respect to the fixing of the hours of attendance of officers. [649]

Doubt has been entertained in the past as to whether the obligation to “provide and uphold” included an obligation to defray the cost of such running expenses as heating, lighting, cleaning, etc. Boards of guardians acted generally in accordance with the view that such expenses were included in their obligations, although, in a particular case where they refused and the S.R. brought an action in the county court, the decision was against him (*k*). The case appears to have been argued solely on the terms of sect. 9 of the B. & D.R. Act, 1836 (*l*), without reference to relevant sections of later Acts. The legal construction of this provision is now ceasing to be material, since, so far as concerns salaried officers, the question whether the current expenses of a register

(*b*) 10 Halsbury's Statutes 963. See now L.G. Superannuation Act, 1937; 30 Halsbury's Statutes 385.

(*c*) 10 Halsbury's Statutes 962.

(*d*) B. & D.R.A., 1836, s. 9; 15 Halsbury's Statutes 703.

(*e*) B. & D.R.A., 1874, s. 33; *ibid.*, 747.

(*f*) 15 Halsbury's Statutes 716.

(*g*) B. & D.R.A., 1837, s. 12; 15 Halsbury's Statutes 715.

(*h*) B. & D.R.A., 1874, s. 26; *ibid.*, 745.

(*i*) *Ibid.*

(*k*) Edmonton County Court, July, 1929.

(*l*) 15 Halsbury's Statutes 703.

office fall to be defrayed by the S.R. has been dealt with in sect. 24 schemes as a matter incidental to the determination of his net salary. It appears to be a normal provision in schemes already approved that the council undertakes to equip and maintain the register office free of expense to the S.R., or to repay to him expenses reasonably and necessarily incurred by him in the equipment and maintenance of the register office.

Similarly, the provision of office and out-station accommodation for R.B.Ds. which, as the law stands, is a liability of the registrar incidental to his tenure of the office, is usually undertaken by the council in schemes under sect. 24, as part of a salary system which aims at fixing a net salary, after providing for incidental liabilities to which the officer might otherwise be subject. [650]

Remuneration.—Prior to the L.G.A., 1929, all registrars were remunerated wholly by fees fixed by statute. These included certain fees payable by the council to the R.B.D. at the rate of 2s. 6d. for each of the first twenty entries registered quarterly and 1s. for every other entry, together with a further sum of 3d. for every death entry (*m*). Other fees are payable by the public for the services to which they are attached. The costs (not otherwise provided for) of prosecutions by the S.R. are defrayed by the Exchequer (*n*); and certain *ex gratia* Exchequer grants have been made for certain heads of expenses.

The L.G.A., 1929, substituted a salary system, optional in the case of persons already in office but compulsory in the case of every new appointment, the salaried officer accounting to the Registrar-General for his fee-income and paying it over to the responsible council upon the Registrar-General's certificate and direction (*o*).

As regards salary and allowances, it is provided that in the pre-scheme stage these should be such as the council in individual cases should determine with the Registrar-General's approval. A scheme under sect. 24 is, however, to fix (subject to any provisions as to variation) the salary and allowances attached to every post comprised within the scheme; and upon the operation of a scheme these provisions supersede any salary arrangements previously approved under sect. 22, and apply thereafter to all holders of the posts to which they relate. [651]

Superannuation.—Prior to the L.G.A., 1929, S.Rs. and R.B.Ds. were deemed to be officers of the guardians for the purposes of the Poor Law Officers' Superannuation Act, 1896 (*p*). Officers serving at the date of the transfer of the functions to councils were thus entitled to the benefit of sect. 124 of the L.G.A., 1929. But the Local Government and other Officers' Superannuation Act, 1922, in the absence of any provision therein deeming S.Rs. and R.B.Ds. to be officers of a local authority, did not apply to registration officers appointed after the transfer. The general effect is discussed in Circular G.R.O. No. 15 of 1929, issued by the Registrar-General (paras. 21–23), which summed up the position created by the L.G.A., 1929, as being that “the only cases where a registration officer appointed by a council” (*i.e.* on or

(*m*) B. & D.R.A., 1836, s. 29; 15 Halsbury's Statutes 704; B. & D.R.A., 1874, s. 31; *ibid.*, 746; B. & D.R.A., 1926, s. 8 (1); *ibid.*, 771.

(*n*) B. & D.R.A., 1874, s. 23; 15 Halsbury's Statutes 744.

(*o*) L.G.A., 1929, s. 22 (3); 10 Halsbury's Statutes, 899.

(*p*) S. 19; 12 Halsbury's Statutes 954.

after the appointed day) "will possess any rights of superannuation in respect of his registration service will be those where he previously possessed rights under the 1896 Act and continued to retain them after the appointed day by the exercise of his option under sect. 124 of the 1929 Act or otherwise."

This lacuna has now been filled by the Local Government Superannuation Act, 1937 (*g*), Sect. 27 of which provides that registration officers are to be deemed for the purposes of the Act to be officers in the employment of a local authority. Part IV. of the Second Schedule permits the inclusion of past service. The appointed day is April 1, 1939. [652]

Compensation.—The compensation provisions of sect. 123 of the L.G.A., 1929, apply to S.Rs., R.B.Ds. and R.Ms.; but a scheme under sect. 24 of the Act may apply those provisions "with the necessary modification and adaptation." This follows substantially from the fact that the actual transfer of registration functions from the guardians to county and county borough councils did not affect the offices, areas, duties or emoluments of existing registrars, the changes in these respects contemplated by the Act being postponed by it to the operation of approved schemes. [653]

Finance.—The responsible council bears the expense of (a) providing and upholding the register office; (b) the fees payable to the clergy for supplying certified copies of entries in their marriage registers at the rate of 6d. per entry (*r*); (c) the fees payable to non-salaried registrars; and (d) in the case of salaried officers, their salaries and allowances and any provision made in lieu, receiving from them in aid the fee-income certified by the Registrar-General to be due on the accounts rendered. The General Exchequer Grants to the authority are applicable towards the residual cost of these arrangements no less than to other expenses of the authority.

By sect. 23 of the L.G.A., 1929 (*s*), the Minister may by order increase any of the fees fixed by the B. & D.R. Acts and M. Acts to an extent not exceeding 50 per cent., in which event the proceeds of the increase are to be accounted for by non-salaried as well as salaried officers and to accrue to the responsible council. This power has not as yet been exercised. [654]

Conditions of Service.—While the statutory incidents of the office of S.R. or R.B.D. under the pre-existing law originally constituted the sole conditions of their tenure, sect. 24 (1) (*g*) of the L.G.A., 1929 (*t*), provides for the fixing by the scheme of "the conditions upon which an office is to be held." This provision, it would appear, is primarily consequential upon the change to remuneration by salary, and enables the implications of the salaried system in regard to general working conditions to be applied to officers not under a contract of employment. Some schemes have made it a condition of the tenure of particular offices that the officer should also serve when required as deputy to another officer, and in certain cases that an officer appointed as S.R. in one district should also accept office as S.R. in a contiguous district if appointed thereto, and should resign either office upon the determination of his tenure of the other. [655]

(*g*) S. 27; 30 Halsbury's Statutes 409.

(*r*) B. & D.R.A., 1837, s. 27; 15 Halsbury's Statutes 717.

(*s*) 10 Halsbury's Statutes 899.

(*t*) *Ibid.*, 900.

Powers of the Clerk.—By sect. 24 (2) of the L.G.A., 1929 (*u*), every scheme is to provide for conferring upon the clerk of the responsible council such general powers of supervision as may be specified, and in particular the powers in regard to the fixing of attendances previously mentioned, and powers in regard to the distribution of business and the transfer of officers from one district or sub-district to another. These powers are vested in the clerk in a statutory personal capacity, in conformity with the general structure of the service. He becomes, in fact, the county officer of the service as the S.R. is the district officer; and by the latter part of the sub-section the clerk in such capacity is included among the officers as to whose duties regulations may be made under sect. 5 of the B. & D.R. Act, 1836 (*a*). [656]

Schemes, their Approval and Amendment.—Schemes under sect. 24 of the L.G.A., 1929 (*b*), must be submitted within such period as the Minister may allow; and failing submission by the council the Registrar-General may make a scheme after consultation with the council and submit it for approval. The Minister, before approving a scheme, must consider any representation by any officer affected (sub-sects. (1), (4) and (5)). A scheme may contain incidental, consequential or supplemental provisions, and may be altered or revoked by a scheme made in like manner as the original scheme (*b*). [657]

Incidental Functions of the Registration Service in their Relation to Local Government. Census-taking.—While the periodical census of population is in practice carried out through local registration officers, the whole of the administrative powers and duties in the matter are vested by the Census Act, 1920, in the Registrar-General, who utilises those officers under the provisions of sect. 2, “requiring S.Rs., Registrars, Overseers and Assistant Overseers of the Poor, Relieving Officers for Poor Law Unions, Collectors of the Poor Rate and such other persons as may be employed for the purpose of the census to perform such duties as may be prescribed.” In this capacity R.B.Ds., acting under census regulations and upon the Registrar-General’s instructions, prepare the plans of enumeration districts, recruit the requisite number of enumerators, instruct them as to their duties and supervise them during the actual enumeration, serving as an intermediate grade of census officers between enumerators and the G.R.O. They are separately remunerated for these services out of Exchequer funds.

Sects. 6 and 7 of the Census Act, 1920 (*c*), make provision for a local census on the application and at the expense of a local authority—for this purpose the Common Council of the City of London, a metropolitan borough council, county council, county borough council or urban district council. Application for a local census is to be made to the M. of H., and may relate to the whole or any part of the council’s area. If the Minister thinks fit to take the necessary steps, an Order in Council under the Census Act may be made “if it appears to His Majesty expedient . . . for the purpose of facilitating the due performance by the local authority of its statutory duties.” Subject to any exception or modification specified in the order the provisions of the Census Act (apart from the provision as to the minimum interval

(*u*) 10 Halsbury’s Statutes 901.

(*a*) 15 Halsbury’s Statutes 701.

(*b*) L.G.A., 1929, s. 131; 10 Halsbury’s Statutes 969.

(*c*) 3 Halsbury’s Statutes 557.

between censuses) apply to the local census as they apply to a national census. [658]

Statistics.—Apart from the census, the extensive statistical activities of the Registrar-General are an administrative development of the opportunities furnished by the material contained in birth, death and marriage registers. Based originally upon the duty imposed by sect. 6 of the B. & D.R. Act, 1836 (*d*), to send to the Minister “a general abstract of the number of births, deaths and marriages,” and the somewhat fuller provisions of sect. 5 of the Census Act, 1920, the statistical production of the service is wholly centralised in the G.R.O.

The material afforded by birth, death and marriage registration is limited to the particulars required to be entered in the register for the purposes which it is primarily designed to serve in each case as a publicly accessible record of “civil status.” The Population (Statistics) Act, 1938, extends the statistical utility of the registration machinery by enabling certain specific additional inquiries to be made by the registrar upon birth or death registration, not for entry in the register, but in confidence (as at the census) and for statistical use only. [659]

By sect. 28 of the B. & D.R. Act, 1874 (*e*), every R.B.D. may be required by a sanitary authority to furnish returns of the particulars registered concerning any specified deaths for a fee of 2*d.* per death and 2*d.* for the return. By this means a M.O.H. may obtain regular intelligence as to the volume and causation of current mortality in his area. [660]

A far more important statistical contribution is made by the registration service for the assistance of public health authorities in the form of the publication by the Registrar-General of weekly, quarterly and annual statistics framed in consultation with the M. of H. upon lines designed to serve the purposes of public health administration. The weekly report contains tables for each sanitary area of the week’s notifications of infectious diseases, from which each M.O.H. may learn of the presence or progress of any epidemic in areas adjoining his own. As regards the annual publications of the Registrar-General, the Chief Medical Officer of the M. of H., in a memo. issued in 1925, invited the attention of medical officers of health to “the mass of valuable information regarding the incidence and fatality of disease” which is contained in these publications, and to the advantage which they offer of enabling the experience of any district to be compared with that of corresponding districts and of the country as a whole. In addition to the tabular matter a volume of commentary is annually published, comprising studies of particular subjects from time to time selected for research. Upon all subjects of special importance (*e.g.* cancer, maternal mortality) both the tabular matter and the commentary assume a corresponding degree of elaboration.

The Registrar-General supplies annually to the M.O.H. of each county, borough, U.D.C. and R.D.C., for his use in the preparation of his own annual report, certain vital statistics respecting his area, including a table of the local mortality classified by causes, elaborated, in the case of counties, county boroughs and metropolitan boroughs, with a sub-division into age-groups. All statistical transfers of deaths from the area of occurrence to the area of residence are notified to the

M.O.H. Supplementary tabulations are prepared at the instance of the authority ; and frequent consultations take place between medical officers of health and the G.R.O. upon questions of common statistical interest.

Apart from mortality, the population statistics of the Registrar-General underlie much of the work of the local authority. Statistics of housing conditions are a permanent feature of Census reports ; the local distribution and movement of populations are a necessary background of town-planning activities. Adjustments of local population statistics are made by the G.R.O. on all boundary changes : such adjusted figures have played an important part in the reviews of county districts under sect. 46 of the L.G.A., 1929 (*f*), and would appear to be at all times indispensable to any comparison between the past and present conditions of particular localities.

In addition to estimates of local populations regularly published for the general use of local authorities and other local services, certain population estimates are framed by the Registrar-General for express statutory purposes in connection with the system of general Exchequer grants (*g*). [661]

London.—Under the L.G.A., 1929 (*h*), the functions of boards of guardians under the Registration Acts were transferred to the City corporation and metropolitan borough councils in London, and references to counties and county boroughs and the council thereof in Part II. of the Act of 1929 must be construed accordingly. Special provisions to enable the City corporation and metropolitan borough councils to grant superannuation to registration officers are contained in the L.C.C. (General Powers) Act, 1934 (*i*).

Sect. 50 of the L.C.C. (General Powers) Act, 1931 (*k*), applies sect. 183 of the Metropolis Management Act, 1855 (*l*), to empower metropolitan borough councils to borrow for the purpose of the provision of register offices. [662]

(*f*) 10 Halsbury's Statutes 916 (now s. 146 of the L.G.A., 1933 ; 26 Halsbury's Statutes 384).

(*g*) L.G.A., 1929, s. 134 ; 10 Halsbury's Statutes 971.

(*h*) S. 27 ; 10 Halsbury's Statutes 902.

(*i*) SS. 42-45 ; 27 Halsbury's Statutes 425-429.

(*k*) 24 Halsbury's Statutes 279.

(*l*) 11 Halsbury's Statutes 929.

REGISTRATION OF ELECTORS

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See also titles :

ELECTIONS ;	LOCAL GOVERNMENT ELECTORS ;
JURORS AND JURY LISTS ;	REGISTRATION OFFICER.

Introductory.—The principal statutes relating to the registration of electors are the Representation of the People Act (abbreviated hereafter in this title to R.P.A.), 1918, the R.P.A., 1921, the R.P. (Economy Provisions) Act, 1926, and the R.P. (Equal Franchise) Act, 1928. These statutes are supplemented by the Representation of the People Order, 1918, which has been reprinted from time to time with amendments (*a*). The central authority is the Home Secretary, to whom the powers conferred by the R.P.A., 1918, on the M. of H. (then the Local Government Board) were transferred by the M. of H. (Registration and Elections, Transfer of Powers) Order, 1921. [663]

The Right to Registration.—The R.P. (Equal Franchise) Act, 1928, substituted for the original sect. 1 of the R.P.A., 1918, sect. 1 (*b*), which provides that a person (*i.e.* man or woman) shall be entitled to be registered as a parliamentary elector for a constituency, if he or she is of full age and not subject to any legal incapacity, and (*a*) has the requisite residence qualification ; or (*b*) has the requisite business premises qualification ; or (*c*) is the husband or wife of a person entitled to be so registered in respect of a business premises qualification.

This right does not apply to university constituencies, but applies to all the constituencies which are within the definition of that term contained in sect. 41 (1) of the R.P.A., 1918 (*c*). Despite the Interpretation Act, 1889, the term "person," as used for registration purposes, does not include a corporation or company, the contrary intention appearing in the relative sections of the R.P.A., 1918.

For registration purposes, a person's age is deemed to be the age on the last day of the qualifying period (*d*) ; full age is attained on the day preceding the twenty-first anniversary of birth. A person who is not a British subject is not entitled to be registered, and the Act does not confer a right to be registered on any person who is subject to any legal incapacity for registration (*e*). [664]

(*a*) See R.P. 134 (S.R. & O., 1918, No. 1818) ; 7 Halsbury's Statutes 665 ; R.P. 139 (S.R. & O., 1928, No. 988) ; R.P. 140 (S.R. & O., 1930, No. 55) ; R.P. 141 (S.R. & O., 1930, No. 381), for the original order and principal amendments.

(*b*) 7 Halsbury's Statutes 548.

(*c*) *Ibid.*, 570.

(*d*) R.P.A., 1918, s. 41 (7) ; 7 Halsbury's Statutes 571.

(*e*) *Ibid.*, s. 9 (3) ; 7 Halsbury's Statutes 554. A peer cannot be registered as a parliamentary elector, but a peeress (even in her own right) is not disqualified for voting and should be registered ; R.P.A., 1918, s. 9 (5) ; 7 Halsbury's Statutes 555.

The conditions of a residence or business premises qualification in a constituency are : (a) residence in premises or occupation of business premises in the constituency on the last day of the qualifying period ; and (b), subject to the exceptions noted *infra*, residence or occupation as above (though not necessarily in or of the same premises) in the constituency during the whole of the qualifying period.

The qualifying period is the period of three months (f), in the year in which the register is prepared, which ends on June 1, and includes that day (g). For a naval or military voter, or a person who has been serving as a member of the naval, military or air forces of the Crown at any time during the above period of three months and has ceased so to serve, the qualifying period is reduced to one month ending as above. [665]

The term "residence" is not defined, but it appears that the conjunction of that term with the word "premises" connotes some definite place which is the elector's home. There need not be any ownership or legal occupation of the premises, and whilst the underlying theory of the statute seems to be that a person has one residence only, it is impossible, in practice, to prevent entirely the registration of the same person in respect of a residence qualification in more than one constituency (h) ; but at a general election a person is not entitled to vote for more than one constituency for which he is registered by virtue of a residence qualification (i). Reference may be made to cases decided under statutes now repealed, but no decision of the Court of Appeal since the commencement of the R.P.A., 1918, affords a definitive interpretation of the term "residence." Each case must be determined on the facts, and regard should be had to any available information as to where the person normally lives, eats and sleeps (k). [666]

Qualification by successive residence occurs when a person has not resided during the whole of the qualifying period in the constituency in which he resides on the last day of the period, but has resided for the remainder of the qualifying period in another constituency in the same parliamentary borough or county, or within another parliamentary borough or county contiguous to that borough or county, or separated therefrom by water not exceeding at the nearest point six miles in breadth, measured in the case of tidal water from low water mark (l). For the purpose of successive qualification the administrative county of London is treated as a parliamentary borough. [667]

Qualification may arise despite interruption of actual residence in the following cases :

- (a) where permission is given by letting or otherwise for the occupation of a house as a furnished house by some other

(f) *I.e.* calendar months (Interpretation Act, 1889, s. 3 ; 18 Halsbury's Statutes 993).

(g) R.P.A., 1918, s. 6, as amended by R.P. (Economy Provisions) Act, 1926, s. 9 and Sched. III. ; 7 Halsbury's Statutes 552.

(h) *E.g.* where a person occupies and keeps open for use throughout the qualifying period houses in two constituencies and spends some part of the qualifying period in each house. The householder's return (Form A), when used, is normally required to be completed before the last day of the qualifying period, and it is almost impracticable to supplement the returns by a complete canvass as on the last day of the qualifying period.

(i) R.P.A., 1918, s. 8, as amended by the R.P. (Equal Franchise) Act, 1928, s. 4 ; 7 Halsbury's Statutes 554.

(k) *Cf. Barlow v. Smith* (1892), 9 T. L. R. 57 ; *R. v. Exeter (Mayor), Wescomb's Case* (1868), L. R. 4 Q. B. 110 ; 20 Digest 11, 40.

(l) R.P.A., 1918, s. 1 ; 7 Halsbury's Statutes 548.

person for part of the qualifying period not exceeding two months in the whole (*m*), or, where the occupation of the person giving the permission commenced more than six months before the last day of the qualifying period, for not more than four months in the whole (*m*) during that period of six months (*n*); or by reason of notice to quit being served and possession demanded by a landlord (*o*);

- (b) where similar periods of absence from the premises in respect of which residence qualification arises have occurred in the performance of any duty arising from or incidental to any office, service or employment held or undertaken by the person whose qualification is in question (*p*).

A person is not entitled to be registered for a constituency in respect of a residence qualification if he commenced to reside in the constituency within thirty days before the end of the qualifying period and ceased to reside therein within thirty days after the commencement of the residence (*q*).

A person who is an inmate or patient in any prison, lunatic asylum (*r*), workhouse or similar institution is not by reason thereof treated as residing therein for the purposes of the R.P.A., 1918 (*s*). [668]

The business premises qualification arises from the occupation of business premises in the constituency on the last day of the qualifying period, coupled with occupation of business premises during the qualifying period either in the same constituency or in a constituency in respect of which successive qualification can arise in the same manner as in the case of residence qualification. The term "business premises" is defined (*t*) as land or other premises of the yearly value of not less than ten pounds occupied for the business, profession or trade (*u*) of the person to be registered. Where two or more persons are joint occupiers of land or premises, each of them is treated as an occupier for the purpose of the business premises qualification; provided that the aggregate yearly value of the premises must be not less than the amount produced by multiplying ten pounds by the number of the joint occupiers, and, further, that not more than two joint occupiers may be registered in respect of the same land or premises unless they are *bona fide* engaged as partners carrying on their profession, trade or business on the land or premises (*a*). The definition of "yearly value"

(*m*) Separate periods should be aggregated if within or partly within the qualifying period.

(*n*) In these circumstances there may be qualification although there is no physical occupation during any part of the qualifying period.

(*o*) R.P.A., 1918, s. 7 (2), as amended by R.P. (Economy Provisions) Act, 1926, s. 9 and Sched. III.; 7 Halsbury's Statutes 553.

(*p*) If the residential qualification subsists by virtue of either of the provisions (*a*) and (*b*), *supra*, the derivative qualification of the husband or wife also subsists. R.P.A., 1921, s. 1, as amended by R.P. (Economy Provisions) Act, 1926, s. 9 and Sched. III.; 7 Halsbury's Statutes 649, 650.

(*q*) R.P.A., 1918, s. 7 (3); 7 Halsbury's Statutes 553.

(*r*) Now mental hospital; Mental Treatment Act, 1930, s. 20; 23 Halsbury's Statutes 171.

(*s*) S. 41 (5); 7 Halsbury's Statutes 570.

(*t*) R.P.A., 1918, s. 1 (3); 7 Halsbury's Statutes 548.

(*u*) *Semble*, the occupier must be conducting a *bona fide* business or trade, or exercising a profession, but there is nothing to prevent a person from exercising more than one business, trade or profession simultaneously. Claims have been allowed where a director of a limited company rents from that company a room in which he carries on other business, e.g. the directorships of other companies.

(*a*) R.P.A., 1918, s. 7 (1); 7 Halsbury's Statutes 552.

is now contained in sect. 80 of the L.G.A., 1929 (*b*), which replaces sect. 41 (9) of the Act of 1918, and is either the gross value for rating purposes appearing in the valuation list for the time being in force, or, failing such gross value, the gross annual value for Schedule A under the Income Tax Act, 1918, or, failing either of the above, the amount which in the opinion of the registration officer would have been the gross value for rating purposes under the enactments relating to rating and valuation in force on February 6, 1918. By sect. 81 of the L.G.A., 1929, the registration officer may require information from surveyors of taxes. [669]

The derivative qualifications, *i.e.* as husband or wife of a person entitled to be registered for a residence or business premises qualification, are subject to the same restrictions as to age, legal disqualifications and nationality as are the primary qualifications; and a derivative qualification arises as a result of marriage taking place during the qualifying period. [670]

Sect. 5 of the R.P.A., 1918 (*c*), provides that a naval or military voter to whom the section applies shall be entitled to be registered as a parliamentary elector for any constituency for which he would have had the necessary qualification but for the service which brings him within the section; the foregoing right is in addition to any other right to be registered, but a naval or military voter is not entitled to be registered in respect of an actual residence qualification in a constituency except on making a claim for that purpose and declaring in the prescribed form (*d*) that he has taken reasonable steps to prevent his being registered under sect. 5 for any other constituency. A statement by any person in the prescribed form (*d*), and verified in the prescribed manner, that he would have had the necessary qualification in a constituency is sufficient if there is no evidence to the contrary. This section applies to any person of full age and not subject to any legal incapacity, who is a British subject (*e*), and who (*i.*) is serving on full pay as a member of any of the naval, military or air forces of the Crown; or (*ii.*) is abroad or afloat in connection with any war in which His Majesty is engaged; and (*a*) is in service of a naval or military character for which payment is made out of moneys provided by Parliament, or as a merchant seaman, pilot or fisherman (*f*); or (*b*) is serving in any work of the British Red Cross Society or the Order of St. John of Jerusalem in England, or any similar society; or (*c*) is serving in any other work recognised by the Admiralty, Army Council, or Air Council as work of national importance in connection with the war. [671]

Freemen and Liverymen.—By sect. 17 of the R.P.A., 1918 (*g*), a freeman of the City of London, who is a liveryman of a City company and entitled to be registered as a parliamentary elector in respect of a business premises qualification within the city, may at his option be entered in a separate list of liverymen, and record his vote as a

(*b*) 10 Halsbury's Statutes 934.

(*c*) 7 Halsbury's Statutes 551.

(*d*) For forms, see Schedule to R.P. Order; the forms include a declaration by the person claiming to be registered and countersigned by the C.O., Head of Department or Administration.

(*e*) S. 9 (3); 7 Halsbury's Statutes 554.

(*f*) Includes masters and apprentices; there is an extension of the definition to cover persons paid out of Dominion funds who would otherwise qualify for a constituency in Great Britain.

(*g*) 7 Halsbury's Statutes 559.

liveryman. The like privilege applies to the freemen of any borough if the borough council so resolve. [672]

The Register.—One register is prepared in each year and remains in force until October 15 in the next following year (*h*); the time-table for the preparation of the register in England and Wales is contained in the Third Schedule to the Act of 1926, and is as follows:—

End of qualifying period, June 1.

Publication of electors lists, July 15.

Last day for notices of objection to electors lists, July 31.

Last day for claims, August 7.

Last day for notification of desire by naval or military voter not to be placed on absent voters list, August 18.

Publication of list of objections to electors lists, August 13.

Publication of lists of claimants, August 13.

Last day for objections to claimants, August 18.

Publication of lists of objections to claimants, August 18th.

Publication of register (*i*), October 15.

The form, arrangement and preparation of the register are governed by the First Schedule to the R.P.A., 1918, as amended and amplified by the Representation of the People Orders; the salient points of the Schedule and Orders are summarised below, but the rules are too long and detailed to be dealt with *in extenso*. Registration forms are prescribed by the R.P. Orders. [673]

A separate part of the register is framed for each registration unit, *i.e.* for each voting area for which a separate election, at which the register is to be used, is held. As the register contains both the parliamentary and local government electors, it must be framed in separate parts for the smallest local government areas concerned, *e.g.* single parishes, wards and the like. In the event of the boundary of a parliamentary constituency not coinciding with the boundary of a local government unit for which a register is required, the register must be sub-divided into separate parts for parliamentary purposes.

[674]

The register is built up from electors lists prepared by the registration officer and duly published, and these lists are in three parts, namely:

List A—a copy of the register in force for the registration unit.

List B—a list of newly qualified electors.

List C—a list of persons no longer qualified as electors.

Lists B and C are compiled as a result of house-to-house canvass or other sufficient inquiries made under the direction of the registration officer. Forms of return to be completed by householders and owners and occupiers of land are provided by the R.P. Order, and the registration officer may require any such person within his area, or that person's agent or factor, to give in the prescribed form any information which the registration officer may require in the course of his duties, under a penalty not exceeding £20 on summary conviction for failing to give the required information or giving false information. Notices may be served by post (*k*). [675]

(*h*) R.P. (Economy Provisions) Act, 1926, s. 9; 7 Halsbury's Statutes 649.

(*i*) Sched. I., R.P.A., 1918, r. 27; R.P. (Economy Provisions) Act, 1926, s. 9 (2); 7 Halsbury's Statutes 649.

(*k*) R.P.A., 1918, Sched. I., r. 35; 7 Halsbury's Statutes 579.

The register is framed so as to contain in separate divisions the names of parliamentary and local government electors ; this is effected by showing the qualifications in parallel columns, the form of register being as under :

Number.	Franchise (l) : (a) Parliamentary. (b) Local Government.	Names in full. Surname first.	Residence or Property occupied and abode of non-resident occupier.

Where the registration unit is situated in a parliamentary borough the names in the register are arranged in street order, unless the authority whose clerk the registration officer is or by whom he is appointed considers that, having regard to the general character of the unit, street order is inapplicable ; in a registration unit in a parliamentary county the normal arrangement is alphabetical order, but the corresponding authority may decide on like grounds that street order is possible and convenient (m). [676]

Whether in street order or in alphabetical order the register is grouped in parliamentary polling districts, and each polling district is allotted a distinctive letter or letters. The electors on the register for each polling district are numbered from 1 consecutively (n), so that by entering the polling district letter and the elector's number on the counterfoil of the ballot paper every vote can be traced to the elector in the event of a scrutiny. The absent voters list is arranged by polling districts, but the electors are numbered consecutively from 1 onwards throughout the list ; and in issuing ballot papers to absent voters the number only, and not the polling district letter, is entered on the counterfoil so as to avoid confusion between those electors on the absent voters list and those on the register with similar numbers. Absent voters are distinguished in the register by the letter "a," but are numbered in the register in their proper order with the non-absent voters. The registers for the several registration units making up a constituency, so far as they relate to parliamentary electors, together form the register of parliamentary electors for that constituency ; and the registers for the registration units making up any local government electoral area, so far as they relate to local government electors, together form the register of local government electors for that area (o). [677]

The electors lists having been prepared and published in accordance with Sched I., r. 6, accompanied by a notice as to the mode in which,

(l) The symbols indicating the parliamentary electors qualifications are : R.=Residence qualification (man) ; B.=Business premises do. (man) ; D.=Qualification through wife's occupation ; R.W.=Residence qualification (woman) ; B.W.=Business premises qualification (woman) ; D.W.=Qualification through husband's occupation ; N.M.=Naval or military voter.

(m) Sched. I., r. 4 ; 7 Halsbury's Statutes 573. Normally a change to street order should not be made unless all streets and roads in the registration unit have been given distinctive names, preferably by the appropriate local authority, and all houses are either numbered or named ; it is not possible to frame the register for a given registration unit partly in street order and partly in alphabetical order.

(n) Sched. I., r. 26 ; 7 Halsbury's Statutes 578.

(o) *Ibid.*, r. 5 ; *ibid.*, 573.

and the time within which, claims and objections are to be made, it is open to any person who claims to be entitled to be registered as a parliamentary or local government elector, and who is not entered in lists A or B, or is incorrectly entered, to make a claim for entry or correct entry, in the prescribed form, which contains a declaration of the qualification of the claimant to be registered, including a declaration that the claimant has attained the required age and is a British subject. A claim may be made on behalf of a claimant by another person; but in such case the name may not be entered on the register unless the matters required to be stated in the declaration are proved to the satisfaction of the registration officer (*p*). Similarly, any person whose name appears on the electors lists for a constituency or local government electoral area may object to the registration of any person whose name is included in the relative electors lists, or in the list of claimants, by sending notice in the prescribed form to the registration officer (*q*). As to publication of lists of claimants and objections (*r*), see rr. 11, 14, 15. Notice of objections must be given to persons affected thereby (*s*). [678]

After the closing dates for the receipt and publication of claims and objections the registration officer must consider them, and for this purpose revision courts are held. In a county constituency the most convenient course is to hold the courts at various centres in the registration area, for groups of registration units. Five clear days' notice (at least) must be given to an objector and to the person in respect of whose registration the objection is made. In the case of claims to which no objection is made, the registration officer, if he considers the claim can be allowed without further inquiry, shall give notice to the claimant that the claim is allowed; but if he considers inquiry necessary he shall give at least five clear days' notice to the claimant of the time and place for dealing with the claim (*t*). [679]

On the consideration of any claim or objection the registration officer may decide that a claimant, or person to whom objection is made, should be entered on the register in a character or for a place different from those for which the claim was made or in respect of which entry was made in the electors lists (*u*). The registration officer must make such additions or corrections to the lists (including the absent voters list) as are necessary to carry out his decisions, and must also make such deletions as are necessary to avoid duplicate entries (subject to any expression of choice by the person affected), and must make corrections consequent upon death or legal incapacity. The registration officer must take steps to prevent a person from being registered more than once as a parliamentary elector in the same constituency. He must also remove the name of any naval or military voter who has taken steps under sect. 5 (1) of the R.P.A., 1918 (*a*), to prevent his being registered in the constituency, so as to enable him to be registered in respect of a residential qualification in another constituency. The registration officer must also expunge the name of any naval or

(*p*) Rr. 9, 10; 7 Halsbury's Statutes 574. In dealing with claims and objections the registration officer may require that any evidence tendered shall be given on oath and may administer an oath for that purpose (Sched. I., r. 40).

(*q*) R. 12.

(*r*) Rr. 11, 14, 15.

(*s*) R. 13.

(*t*) Rr. 20, 21.

(*u*) R. 22.

(*a*) 7 Halsbury's Statutes 551.

military voter in respect of whom he receives a statement from the registration officer for another constituency that the voter will be registered in the register then in course of preparation for the other constituency (b).

When a name is wrongly inserted in List C (as no longer qualified), or is inadvertently omitted from List A or List B, the most convenient course is to arrange for the local registration officer to make a claim on behalf of the person omitted. [680]

A person whose name appears in the list of parliamentary voters for a county constituency or for a constituency consisting of a "district of boroughs" (but, *semble*, not a self-contained parliamentary borough), and who resides outside the polling district in which he is entitled to be registered, may claim to vote at any other polling place in the same constituency and must be admitted to vote accordingly (c). The claim must be made in Form IX in Sched. I. to R.P. 134, and the names of the out-voters are added as a supplement to the register for the polling district in which they are entitled to vote; and they also appear in the register for the district of qualification and are marked with an asterisk (*) to indicate that the elector votes elsewhere. The last day for the submission of claims to be entered as out-voters is August 18.

On the consideration by the registration officer of any claim or objection or other matter, any person appearing to the registration officer to be interested may be heard in person or by any person other than counsel (d).

On the formation of the register from the lists (e), the registration officer publishes the register in accordance with r. 27 and arranges for copies to be available for inspection.

As to publication of documents, see r. 31; unauthorised destruction, mutilation, defacement, or removal of any notice published or document made available for inspection by the registration officer in the course of his duties, is punishable on summary conviction by a fine not exceeding five pounds.

Claims and objections may be sent to the registration officer by post (f) and notices required to be served by him may be sent by post (g). [681]

The Absent Voters List.—This list is compiled by the registration officer at the same time as the electors lists and is a supplement to the register; names entered in this list are not removed from the register (h). As to the form of this list, see *ante*, p. 297. Any person entitled to be registered as a parliamentary elector may claim to be placed on the absent voters list, and shall be placed thereon if the registration officer is satisfied that there is a probability that by reason of the nature of his occupation, service or employment, the claimant may be debarred from voting at a poll at parliamentary elections held during the currency of the register (i). A person other than a naval or military voter must claim to be placed on the absent voters list in respect of each

(b) Sched. I., r. 23; 7 Halsbury's Statutes 577.

(c) R. 24. For "district of boroughs," see Sched. IX.

(d) Rr. 39, 40.

(e) R. 26.

(f) This means ordinary prepaid letter post; as to service by post, see Interpretation Act, 1889, s. 26; 18 Halsbury's Statutes 1002. If the document is properly addressed, service is deemed to be effected, unless the contrary is proved, at the time at which the letter would be delivered in ordinary course of post.

(g) R. 34.

(h) R. 3.

(i) R. 16.

register, and is not continued automatically on the list. The privilege of being placed on the absent voters list (and thereby being enabled to vote by post) does not extend to a person deriving a qualification from a claimant to be placed on that list; a person with a derivative qualification, if eligible for the absent voters list, must claim entry thereon in his or her own right. Claim must be made not later than August 18 in the year in which the register is compiled.

The practice as to allowing claims for entry on the absent voters list is not entirely uniform, but it is submitted that normally claims by the following and analogous classes should be allowed: seamen, fishermen, commercial travellers, certain classes of railway and road transport workers, travelling well-sinkers, steel erectors and engineers, and persons whose normal employment involves absence from home for substantial periods. [682]

By r. 17 the registration officer is required to place on the absent voters list any naval or military voter, unless: (a) the voter, not later than August 18, gives notice to the registration officer that he does not desire to be placed on the absent voters list; or (b) the voter is registered, in pursuance of a claim for that purpose, for the constituency in which he has an actual residence qualification; or (c) the voter is serving for a temporary period during an emergency or for purposes of annual training either in H.M. naval, army or air force reserves, or in the territorial force.

Information as to the names and addresses and other particulars of naval and military voters is to be supplied to the registration officer by the service departments (*k*). By r. 19, the registration officer is required to keep a record of addresses of absent voters; addresses are furnished by the individual voters in the case of civilians, and by the Admiralty, Army Council, Air Council and Board of Trade in other cases. In the case of absent voters serving in H.M. forces, other than an officer in the army or air force, any address recorded more than thirty days before the nomination of candidates at an election is disregarded and the then current addresses are furnished through service channels.

In practice it is found desirable to keep in touch informally with Army record offices, the Admiralty and the Air Ministry in order to ensure that the electors lists and absent voters lists are kept up to date, and to refer to the appropriate service department any case in which trace of a naval or military voter has been lost, or a doubt has arisen as to the continuance of his qualification. [683]

London.—The position in London under the Representation of the People Acts is similar to that elsewhere. References to municipal boroughs in Part II. of the Representation of the People Act, 1918, are to include reference to metropolitan boroughs and the City of London, with the substitution for "town clerk" of "secondary" in the case of the City of London and the "clerks of metropolitan borough councils" in the case of those councils. Registration expenses are paid as general expenses of a borough council and, as regards the City, out of the general rate (*l*).

For the purpose of successive qualification (see *ante*, p. 293) the administrative county of London is treated as a parliamentary borough. [684]

(*k*) R. 18; 7 Halsbury's Statutes 559.

(*l*) R.P.A., 1918, s. 16 (2); 7 Halsbury's Statutes 559.

REGISTRATION AND LICENSING OF MOTOR VEHICLES

See MOTOR LICENCES ; PUBLIC SERVICE VEHICLES.

REGISTRATION OFFICER

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NOTE.—*R.P.A.* = *Representation of the People Act*.

Appointment of Registration Officers.—Provision is made by the R.P.A., 1918 (*a*), that each parliamentary borough and parliamentary county shall be a registration area, and for each such area there shall be a registration officer; the parliamentary boroughs and counties (which in many cases are not co-terminous with municipal boroughs and administrative counties) are enumerated in the Ninth Schedule (*b*). By the combined effect of sects. 12 (2) and 16, the following officers are statutory registration officers: (*a*) in a parliamentary county co-terminous with or wholly contained in one administrative county, the clerk of the county council; (*b*) in a parliamentary borough co-terminous with or wholly contained in one municipal borough, the town clerk; (*c*) in a parliamentary borough co-terminous with an urban district, the clerk of the U.D.C. (*c*); (*d*) in any other case such clerk of the county council or town clerk as the Home Secretary (originally the Local Government Board) may by order direct; and conditions may be made in the order for the appointment of deputies for any part of the registration area. [685]

The Home Secretary, and his predecessor (*d*) in the exercise of the

(*a*) S. 12 (1); 7 Halsbury's Statutes 555.

(*b*) 7 Halsbury's Statutes 589.

(*c*) Where an urban district is wholly contained in a parliamentary borough, but is not co-terminous therewith, the registration officer is such town clerk as the Home Secretary may direct, but for this purpose references to a town clerk include references to the clerk to a U.D.C.; note the difference in wording between s. 12 (2) and s. 16 (1), as to co-terminity of urban districts with parliamentary boroughs.

(*d*) The R.P.A., 1918, empowered the Local Government Board to make orders for this purpose, but under the M. of H. Act, 1919, s. 3 (3) (4); 3 Halsbury's Statutes 418, this power (*inter alia*) was transferred to the Home Secretary by the M. of H. (Registration and Elections, Transfer of Powers) Order, 1921.

powers contained in sect. 12 (2) of the R.P.A., 1918, has made orders directing what officer shall be registration officer in areas which are not in categories (a), (b) and (c), *supra*. The orders now in force are the Registration Officers Order, 1918, the Registration and Returning Officers Orders, 1922, 1923, 1925, 1928, 1930, 1931, 1932, 1933, 1934, 1935, 1936 and 1937. The Order of 1918 deals with the registration areas scheduled to the Act of 1918, and which were not at the commencement of the Act in categories (a), (b) and (c), *supra*; the subsequent orders deal with the position arising from the alteration of county and borough boundaries for administrative purposes, which alterations do not affect the boundaries of parliamentary counties and boroughs. The Order of 1918 contains no provisions as to deputies, but the subsequent orders, dealing with added areas and with boundary adjustments, make provision for the compulsory appointment of certain officers as deputies. [686]

Under sect. 12 (3) any of the powers and duties of the registration officer may be performed by a deputy approved by the Home Secretary, and the provisions of the R.P.A., 1918, apply to him, as respects functions to be exercised by him, as they apply to the registration officer. The appointment of deputy is made by the registration officer and preferably should be in writing, and should specify the parts of the registration area for which the deputy is to act, unless he is appointed generally for the whole area, and should also specify any limitations of his functions or reservation of functions to the registration officer; the deputy should not act as such prior to the issue by the H.O. of a letter of approval. No statutory qualification is prescribed, but in practice it is unlikely that approval would be given to a deputy not possessing either legal qualifications or adequate experience of registration duties. [687]

In the event of a vacancy in the office of registration officer, or inability to act, the chairman of the county council or the mayor, as the case may be, is empowered to appoint a person to act temporarily as registration officer (e). No H.O. approval is necessary, but in practice the name and address of the person so appointed should be notified to the H.O. and to the Treasury.

There are no statutory provisions as to the removal of a registration officer, but an officer who ceases to hold an office by virtue of which he is a statutory registration officer, vacates his registration office at the same time.

The duty of preparing the register for a university constituency falls on the governing body of every university forming, or forming part of, such a constituency (f). [688]

Registration Duties.—The duty of the registration officer is to compile the register and to place thereon the names of those entitled to vote as parliamentary or local government electors in his registration area, and to give all necessary notices and publish and deposit lists and registers; in so doing he must comply with the rules set out in the R.P.A., 1918, Sched. I. (g), and with any general or special directions given by the Home Secretary as to arrangements for carrying out his duties. Refusal, neglect or failure, without reasonable cause, to per-

(e) R.P.A., 1918, s. 12 (4); 7 Halsbury's Statutes 556.

(f) *Ibid.*, s. 19; *ibid.*, 560.

(g) 7 Halsbury's Statutes 572. For a summary of the rules, see title REGISTRATION OF ELECTORS.

form any of his registration duties renders the registration officer liable on summary conviction to a fine not exceeding £100 (*h*). The registration officer is required (*i*) to mark in the prescribed manner the names of such persons included in the register as are qualified and liable to serve as jurors and special jurors (see title JURORS AND JURY LISTS). He is required also (*k*), by r. 8 of the First Schedule to the R.P.A., 1918, to publish, together with the electors lists, the corrupt and illegal practices list (if any) made by or sent to him under sect. 39 of the Corrupt and Illegal Practices Prevention Act, 1883, or sect. 24 of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (*l*) (see title CORRUPT AND ILLEGAL PRACTICES). [689]

In performing his registration duties, the registration officer is acting in an independent statutory office and to some extent is acting judicially; he is not subject to control (*m*) in the execution of his office by the council by whom he is appointed to the office from which he derives his appointment as registration officer. [690]

Appeals.—An appeal lies to the county court from any decision of the registration officer on any claim or objection which has been considered by him under the R.P.A., 1918, or against the placing or refusal to place any mark against any name on the register; no appeal lies unless the appellant availed himself of the opportunity of being heard (*n*) by the registration officer on the claim or objection or as to the placing of or refusal to place the mark (sect. 14 (1)). Appeals to the county court are governed by the County Court Rules, 1936, Ord. 43. There is an appeal on any point of law from the decision of the county court to the Court of Appeal (*o*). Notice is given to the registration officer in manner provided by rules of court of the decision of the county court or of the Court of Appeal, and the registration officer must make such alterations in the electors lists or register as may be required to give effect to the decision (*p*). The registration officer is deemed to be a party to any appeal; costs incurred by him as party to an appeal are payable by the council whose clerk he is (*q*). The registration officer must inform the county court when notices of appeal appear to him to be based on similar grounds so that the appeals may be consolidated or a test case selected (*r*). [691]

Remuneration and Expenses.—Any expenses properly incurred by a registration officer in the performance of his duties in relation to registration are payable by the council whose clerk the registration officer is; and where the registration area is not co-terminous with or

(*h*) R.P.A., 1918, s. 13 (1); 7 Halsbury's Statutes 556. Orders in Council may prescribe forms and fees, and alter the rules in Sched. I.; these rules and any Order in Council for the above purposes are given statutory effect (R.P.A., 1918, s. 13 (2); 7 Halsbury's Statutes 556).

(*i*) Juries Act, 1922, s. 1; 10 Halsbury's Statutes 82.

(*k*) R.P.A., 1918, Sched. I., r. 8; 7 Halsbury's Statutes 574.

(*l*) 7 Halsbury's Statutes 487, 521.

(*m*) But note that in effect the appointing council determines whether the register shall be in street or alphabetical order (R.P.A., 1918, Sched. I., para. 4; 7 Halsbury's Statutes 573).

(*n*) See Sched. I., and title REGISTRATION OF ELECTORS.

(*o*) R.P.A., 1918, s. 14 (2); 7 Halsbury's Statutes 557.

(*p*) S. 14 (4).

(*q*) S. 15 (1). As to the position where the registration area is not co-terminous with or wholly contained within the administrative area of the council, see title EXPENSES, *infra*.

(*r*) Sched. I., r. 30.

wholly contained in the area of that council, contributions are payable by the councils of other counties or boroughs as the Home Secretary may determine (s). The Registration Expenses (Contribution) Order, 1918, provides for payment by councils wholly or partly within the registration area, not being the council whose clerk is the registration officer, of contributions towards the net total registration expenses, after deducting Treasury grant, in the same proportion as the number of registered electors in the area of the contributing council bears to the total registered electorate of the registration area. [692]

Registration expenses are payable out of the general rate fund or general rate in a borough, or where there is no such fund or rate, out of the fund or rate out of which the ordinary expenses of the council are paid; in an administrative county payment is made out of the county fund, as expenses for special county purposes where necessary (t). [693]

The Treasury may frame a scale of registration expenses applicable to all or any class or classes of expenses. Any question as to whether expenses, to which the scale is not applicable, have been properly incurred is referred to the Home Secretary, whose decision is final (R.P.A., 1918, sect. 15 (2)). The scale is contained in S.R. & O., 1931, No. 194, which provides for the registration officer's fee (including payments to deputies), allowances in respect of clerks, remuneration of local registration officers and persons similarly employed and canvassers; the basis of payment is a combination of fixed fees and fees per 1,000 (or per 100) of electors; and provision is made for remunerating local registration officers for attendance at revision sittings, and for the cost of printing, travelling and other out-of-pocket expenses. Subsequent orders imposing economy reductions have now expired.

Fees or other sums (e.g. for the sale of registers) received by the registration officer, other than in respect of registration expenses are paid to the credit of the fund or rate out of which the registration expenses are payable (u). [694]

A Treasury grant of one-half the amount of registration expenses paid by a council is payable to that council (a). The council, whose clerk the registration officer is, may, if they think fit (b), make an advance to him on account of registration expenses (c). The question whether the personal remuneration of the registration officer is retained by him or is taken by the council whose clerk he is, is a matter for mutual arrangement. [695]

Staff.—The R.P.A., 1918, and the orders made thereunder contain no provision for indoor clerical staff, apart from the scale of allowances for clerical assistance. Sects. 105 (3) and 106 (6) of the L.G.A., 1933 (d),

(s) R.P.A., 1918, s. 15 (1); 7 Halsbury's Statutes 557.

(t) *Ibid.*, as modified by R. & V.A., 1925, s. 10 (1); L.G.A., 1933, ss. 181, 185; 26 Halsbury's Statutes 405, 407.

(u) R.P.A., 1918, s. 15 (3); 7 Halsbury's Statutes 558.

(a) S. 15 (4).

(b) *Semble*, if the council decline to make an advance, the registration officer must make his own arrangements for meeting current expenditure; where the registration officer retains the personal remuneration and makes his arrangements for the registration work an advance may not be necessary, but in the many cases in which the registration fees are taken by the council it is almost essential that an advance should be made.

(c) S. 15 (5).

(d) 26 Halsbury's Statutes 361, 362.

enable a county council and a town council to assign officers to assist the clerk of the county council or the town clerk in any of his registration duties upon such terms as may be agreed between the council and the clerk. [696]

London.—See London note to title REGISTRATION OF ELECTORS.

REGISTRIES FOR SERVANTS

See EMPLOYMENT AGENCIES.

REGULATED INDUSTRIES

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 STREET TRADING ;
 TRADE EFFLUENTS ;
 WEIGHTS AND MEASURES ;

and numerous titles dealing with particular industries.

Introductory.—Virtually every branch of industry is subject to some degree of supervision or regulation by local authorities, under statutory powers contained in general or local Acts, and often also by officers of departments of the Government. Those powers are described in numerous other titles dealing with the industries concerned. The purpose of this title is to indicate in a general way, with examples, some of the different methods adopted for regulating industry through the medium of local authorities. [697]

Purposes of Regulation.—It is not possible to classify these methods by reference to the objects sought to be attained, because one statute may confer a variety of powers designed to secure that in some branch of industry a number of different purposes are served. For example,

the Food and Drugs (Adulteration) Act, 1928 (*a*), aims at protecting both the health and the pockets of purchasers of food, and the Merchandise Marks Act, 1926 (*b*), with the orders made thereunder, is intended to protect the interests of producers of food in Great Britain and the British Empire, as well as those of consumers. [698]

Briefly, and in very general terms, it may be stated that the objects of the numerous statutory enactments regulating the conduct of industry include the following :

The protection and promotion of the physical health of the population generally or of particular classes of persons (*e.g.* women or children) or of workers employed in an industry ;

the protection of morals, *e.g.* in connection with the public entertainment industry ;

the promotion of safety from fire, explosion and other perils ;

the promotion of comfort, by the prevention of certain forms of nuisance ;

the prevention of some kinds of fraud in business ;

the promotion and protection of the interests of industrialists, notably those engaged in agriculture ;

the protection of animals ;

the preservation of amenities and of the beauties of scenery ;

the protection of the public purse and of the purses of individuals.

Evidently the list of purposes intended to be served through the regulation of industry by local authorities could be enlarged indefinitely. The industries over which some control is exercised range from the largest public utility undertakings supplying gas, electric power, water and transport, to those pursued by such humble tradesmen as vendors of horseflesh, rag and bone dealers and street traders.

For these purposes, local authorities are entrusted with varying powers such as licensing, registration, the enactment of bye-laws, inspection, prosecution, and miscellaneous methods of control which may be little more than nominal or may be so complete as to prevent the establishment or continuance of a business. [699]

Registration and Licensing.—Licensing powers, as distinct from powers of registration, seem to be conferred when there are reasons for requiring compliance with provisions of special importance. Thus every dairy must be registered with the local authority, and the authority's officers may inspect the registered premises and insist that necessary precautions be taken to secure the cleanliness of dairies, etc., and to protect milk against infection and contamination. If, however, a milk producer proposes to sell milk under such special designations as "accredited milk" or "tuberculin-tested milk," he must also obtain a licence from the council of the county or county borough ; and before the licence may be granted a number of special and stringent requirements, involving veterinary examination and bacteriological tests, have to be satisfied (*c*). Again, any shopkeeper may register his premises under the Explosives Act (*d*) for the sale of fireworks, the only object of that registration being to enable the local authority's inspectors to know where explosives are sold. But if a person desires to establish a store for considerable quantities of explosive, he must obtain a licence from

(*a*) 8 Halsbury's Statutes 884. See now Food and Drugs Act, 1938.

(*b*) 19 Halsbury's Statutes 898.

(*c*) See title MILK AND DAIRIES, Vol. IX., p. 195.

(*d*) 8 Halsbury's Statutes 885, see title EXPLOSIVES, Vol. V., p. 392.

the authority, which is required to satisfy itself that the situation and construction of the store comply with the appropriate regulations.

[700]

Still another example may be given. Any local sanitary authority to whose area sect. 85 of the P.H.A. Amendment Act, 1907 (e), is applied, has power to register employment agencies for female domestic servants and to make bye-laws of rather limited scope for the regulation of such businesses. But many councils of counties and boroughs have gone further and by local Acts have obtained licensing powers in respect of all kinds of employment agencies in order to be able to control more thoroughly the conduct of that industry. [701]

Registration of trade premises with a local authority does not always involve inspection by that authority's officers. For example, butter-factories and the premises of wholesale dealers in margarine must be registered with the Food and Drugs Authority, but the inspection of the registered premises is a matter for officers of the M. of A. (f).

[702]

When a local authority has power to register or licence it may have a discretion to refuse or revoke the registration or licence on specified grounds, subject usually to some right of appeal. This applies, for example, to the registration of nursing homes (g) and common lodging houses (h), and also under many local Acts to the registration of dealers in ice-cream (i) and to the licensing of establishments for massage and special treatment (k). In all these instances, appeal against an adverse decision of the local authority lies to a court of summary jurisdiction. On the other hand, an appeal against refusal or revocation of "listing" of premises at which poisons may be sold, under the Pharmacy and Poisons Act, 1933 (l), must be made to a court of quarter sessions. Exceptionally, there seems to be no appeal open to a person to whom a local authority refuses a licence to deal in game (m). Local authorities have in some instances no power to refuse registration on any ground, for example the registration of dealers in old metal and "marine store dealers" (n), and the registration of premises under the Explosives Act (o). Nor may a local authority refuse to issue a pawnbroker's certificate (p). [703]

Bye-Laws.—Frequently, a local authority which has licensing or registering powers in relation to an industry has also powers to make and enforce bye-laws regulating the conduct of the business. In some instances the authority has power to make bye-laws applicable to an industry for which neither a licence nor registration is needed. Examples

(e) 13 Halsbury's Statutes 942, see title EMPLOYMENT AGENCIES, Vol. V., p. 352.

(f) 8 Halsbury's Statutes 890, see title BUTTER, MARGARINE AND CHEESE, Vol. II., p. 353.

(g) S. 187, P.H.A., 1936; 29 Halsbury's Statutes 452, see title NURSING HOMES, Vol. IX., p. 411; and see P.H. (L.) Act, 1936, ss. 240-249; 30 Halsbury's Statutes 544-578.

(h) S. 238, P.H.A., 1936; 29 Halsbury's Statutes 477, see title LODGING HOUSES, Vol. VIII., p. 161.

(i) See title ICE CREAM, Vol. VII., p. 135. As from October 1st, 1939, all premises used in connection with the sale and manufacture of ice-cream require registration under the Food and Drugs Act, 1938.

(k) See title MASSAGE, Vol. VIII., p. 368.

(l) 26 Halsbury's Statutes 577. See title POISONS, Vol. X., p. 234.

(m) See title GAME DEALER, Vol. VI., p. 150.

(n) See title MARINE STORE DEALER, Vol. VIII., p. 333.

(o) See title EXPLOSIVES, Vol. V., p. 352.

(p) See title PAWNBROKERS, Vol. X., p. 146.

are to be found in the Weights and Measures Act, 1889 (*g*), relating to the sale of coal by weight ; in sect. 270 of the P.H.A., 1936 (*r*), with regard to the decent lodging and accommodation of hop-pickers and persons temporarily employed in gathering fruit, flowers and vegetables ; and in various local Acts enabling local authorities to legislate for the purpose of securing cleanliness in the conduct of the business of a hair-dresser or barber (*s*). [704]

Special Consent for Establishment of a Business.—The establishment of an offensive trade, as defined in sect. 107 of the P.H.A., 1936 (*t*), requires the consent of the local sanitary authority, and (with the formal confirmation of the M. of H.) the authority may by order declare some other trade, not defined in the Act as offensive, to be an offensive trade. The authority may make bye-laws regulating the conduct of any offensive trade, and also with respect to the business of fish-frying, which may not in future be declared to be an offensive trade. [705]

Other Powers.—The business of receiving children for reward does not require registration or licensing, but a person carrying on this business must notify the appropriate local authority whenever a child is to be received, and the authority has extensive powers of control and supervision (*u*).

In several instances, while a Government department is entrusted with extensive powers of control over industrial enterprises, local authorities also have certain powers and duties.

Thus, registration of the numerous chemical works which are within the scope of the Alkali, etc., Works Regulation Act, 1906 (*a*), is effected with the M. of H., and the Ministry's officers have the duty of making inspections. But a local authority may make representations in this connection and move the Ministry to action. [706]

Under the Factories Act, 1937 (*b*), local authorities now have the duty of enforcing the provisions of sects. 1 to 7 of that Act so far as they relate to sanitary conveniences in factories generally, and also so far as they relate to cleanliness, overcrowding, temperature, ventilation and the drainage of floors in those factories in which mechanical power is not used, *i.e.* those previously designated "workshops." The Third Schedule to the Act contains a number of special provisions relating to bakehouses, which are in future to be administered by local authorities and not, as heretofore, by the H.O. inspectors of factories. [707]

The conduct of inns is a matter for licensing justices and the police, but local authorities have power to require the provision of adequate and satisfactory sanitary conveniences (*c*). [708]

Those local authorities which have their own police force are concerned with the control of many industries. A recent example is to be found in the Firearms Act, 1937 (*d*), which requires the registration

(*g*) 20 Halsbury's Statutes 399, see title COAL WEIGHING, Vol. III., p. 250.

(*r*) 29 Halsbury's Statutes 496, see title FRUIT AND HOP PICKERS, Vol. VI., p. 148.

(*s*) See, for example, Essex County Council Act, 1933 (23 & 24 Geo. 5, c. xiv.), and Middlesex County Council Act, 1934 (24 & 25 Geo. 5, c. lxxxix.).

(*b*) 29 Halsbury's Statutes 403, see title OFFENSIVE TRADES, Vol. IX., p. 434.

(*u*) Ss. 206-218, P.H.A., 1936 ; 29 Halsbury's Statutes 463-469.

(*a*) 18 Halsbury's Statutes 894, see title ALKALI, ETC., WORKS, Vol. I., p. 218.

(*b*) 30 Halsbury's Statutes 201.

(*c*) S. 89, P.H.A., 1936 ; 29 Halsbury's Statutes 391, see title PUBLIC HOUSE.

(*d*) 30 Halsbury's Statutes 907.

of dealers in firearms, and places many restrictions on the sale of firearms and ammunition. [709]

Local authorities may be represented on statutory boards or commissions set up to regulate particular industries. An example is to be found in the fishery boards constituted under the Salmon and Freshwater Fisheries Act, 1923 (*e*). The fishing and fish-selling industries are further regulated by local fisheries committees under the Sea Fisheries Regulation Act, 1888 (*f*), and by the Sea-Fish Commission, mainly a body advising the M. of A., under the Sea Fishing Industry Act, 1938 (*g*).

Mention must be made of the numerous marketing boards and commissions constituted under the Agricultural Marketing Acts, 1931 (*h*) and 1933 (*i*), the Wheat Act, 1932 (*k*), and the Livestock Industry Act, 1937 (*l*). During the session of 1938, the following new statutes regulating industries have been passed:—Baking Industry (Hours of Work) Act, Road Haulage Wages Act, Coal Act, Bacon Industry Act, Sea Fish Industry Act, Chimney Sweepers' Acts (Repeal) Act. [710]

The control exercised by chartered or otherwise recognised organisations, such as that of the Pharmaceutical Society of Great Britain over the practice of pharmacy, and that of the Worshipful Company of Fishmongers over the sale of fish, is quite independent of local authorities and does not fall within the scope of this title. [711]

The regulation of advertising and bill-posting, agriculture (in ways too numerous to mention), building, markets and fairs, mines and minerals, and public utility undertakings can only be the subject of passing mention here. These and many other industries are dealt with under special titles. [712]

The entertainment and amusements industry is subject to especially extensive regulation. Reference may be made to the following titles: BATHING; BILLIARDS; CINEMATOGRAPHS; ENTERTAINMENTS, PROVISION OF; HORSES, PONIES, MULES OR ASSES; LICENSING; MUSIC, SINGING AND DANCING; PERFORMING ANIMALS; PLEASURE BOATS; ROUNDABOUTS; SHOOTING GALLERIES; SKATING; SUNDAY ENTERTAINMENTS; THEATRES; and THEATRICAL EMPLOYEES' REGISTRATION. Also, under some local Acts, it is necessary that a licence be obtained from a local authority for premises used for public boxing contests. [713]

(*e*) 8 Halsbury's Statutes 780.

(*g*) 26 Halsbury's Statutes 147.

(*i*) 26 Halsbury's Statutes 7.

(*l*) 30 Halsbury's Statutes 3.

(*f*) *Ibid.*, 743.

(*h*) 24 Halsbury's Statutes 11.

(*k*) 25 Halsbury's Statutes 7.

REGULATIONS

See BYE-LAWS; ORDERS; STATUTORY RULES AND ORDERS.

REHOUSING

See SLUM CLEARANCE.

RELAYING ROADS

See REPAIR OF ROADS.

RELIEVING OFFICER

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CASE PAPER SYSTEM;
OUTDOOR RELIEF;

PUBLIC ASSISTANCE;
PUBLIC ASSISTANCE COMMITTEE.

General Outline.—The relieving officer was one of the officers whom each board of guardians was required to appoint under the General Consolidated Order, 1847, and the appointment has been continued until the present time. The duties as now prescribed by the Public Assistance Order, 1930, vary little from the duties prescribed by the 1847 Order. The relieving officer is responsible for the administration of outdoor relief under the direction of the public assistance committee and in counties of the local guardians committees. The council of each county and county borough must appoint a relieving officer for every general relief district in pursuance of art. 20 of the Public Assistance Order, 1930 (a). Relieving officers may be classified in two groups: (1) district relieving officers, corresponding in number with the number of general relief districts; (2) superintendent and general relieving officers. Assistant relieving officers may also be appointed to give general assistance to the relieving officer of a district or districts and to act as relieving officer in the absence of the permanent official. A relieving officer or assistant relieving officer may be male or female. It is becoming usual in many areas to appoint women relieving officers or assistant relieving officers to assist in dealing with the administration of relief to women and children. [714]

It was formerly the general practice for the district relieving officer also to undertake the duties of collector of contributions from liable relatives and other persons towards the cost of persons receiving

relief, and to be registrar of births and deaths and vaccination officer. In urban and industrial areas the general practice now is to appoint special collectors, but in rural and sparsely populated districts the work of collection is still made the responsibility of an officer having other duties. In both rural and urban areas it is becoming the more general practice for the collection of contributions to be separated from the investigation of applications for relief, and this duty is usually performed by a specially appointed collector responsible to the financial officer. [715]

Each district relieving officer must give all reasonable assistance to any other district relieving officer by examining the case of any applicant for relief, or by administering relief to any person within his district and whose name is entered on the books of the other relieving officer (b).

The relieving officer, by the nature of his duties, is sometimes obstructed or assaulted whilst engaged in such duties. The council may pay the reasonable cost of the apprehension and prosecution of any person charged with such an offence (c).

While the relieving officer is primarily concerned with the administration of outdoor relief he should keep in close touch with officers administering other social services, both national and local, and in particular with officers engaged in the administration of unemployment assistance under the Unemployment Assistance Act, 1934. [716]

Appointment.—A relieving officer is appointed by the county or county borough in which his district is situated. A change in his district does not necessitate any re-appointment of the officer. The M. of H. has pointed out that it is important, in the interests of efficient administration, that the number of relief districts should be adequate, so that each relieving officer may give sufficient attention to the administration of relief in his district. The name and remuneration of every officer must be reported to the Minister on his appointment (d). The council may appoint or employ a suitable person as an assistant relieving officer or temporary substitute for the relieving officer (e).

The regulations contained in the Public Assistance Order, 1930, apply to every relieving officer, subject to a proviso that the order is not adversely to affect the tenure of office, remuneration or conditions of service of any officer who was in office at April 1, 1930 (f). A person holding office as a relieving officer is deemed to be a senior poor law officer (g).

If a relieving officer is entrusted with the custody or control of money he must give security for the faithful execution of his office, and for duly accounting for all money which may be entrusted to him. Even if he is not entrusted with money he may be required to give security (h).

The council may not, without the consent of the Minister, reduce the remuneration of any relieving officer. Any reduction so approved may only be effected after three months' notice (i).

(b) Public Assistance Order, 1930, art. 167 (7) ; 12 Halsbury's Statutes 1080.

(c) Poor Law Act, 1930, s. 157 (g) ; *ibid.*, 1044.

(d) Public Assistance Order, 1930, art. 162 ; *ibid.*, 1077.

(e) *Ibid.*, art. 149.

(f) *Ibid.*, art. 8.

(g) *Ibid.*, art. 144.

(h) L.G.A., 1933, s. 119 ; 26 Halsbury's Statutes 369 ; Public Assistance Order, 1930, art. 155.

(i) Public Assistance Order, 1930, art. 162 ; 12 Halsbury's Statutes 1077.

As to superannuation of relieving officers, see title SUPERANNUATION. [717]

Qualifications for Appointment.—No person may be appointed as a relieving officer who has not had previous experience in local government or poor law administration in an office the duties of which are similar to those of a relieving officer, or such other experience as the council, with the consent of the Minister, may prescribe. This regulation does not, however, prevent a council from appointing a person who holds the relieving officers certificate, issued by the Poor Law Examinations Board, although he has not had the requisite experience (*k*).

A relieving officer must reside within his district unless the council approves otherwise (*l*).

No person may hold the office of relieving officer who does not undertake to devote the whole of his time to service under the council within his district, except that he may be appointed as registrar of births and deaths, or registrar of marriages or vaccination officer (*m*). It is competent for the council to entrust to a relieving officer any suitable functions in addition to those of administering relief. [718]

Disqualifications for Appointment.—A person is disqualified for appointment as a relieving officer if during the previous twelve months he has been a member of the council (*n*).

A person is ineligible for such an office during the period of seven years after a conviction under the Corrupt and Illegal Practices Prevention Act, 1883 (*o*); sects. 23 to 36 of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (*p*); and no person who has been convicted of felony, fraud or perjury, may hold office (*q*).

Any person who has been removed by the Minister from any paid office connected with the relief of the poor is not competent to be appointed to or fill any such paid office except with the consent of the Minister (*r*). [719]

Dismissal and Removal from Office.—A relieving officer is subject to the same conditions as to the determination of his office as other senior poor law officers (*s*). The Minister may remove from office a relieving officer whom he considers unfit or incompetent to discharge his duties, or who has refused or wilfully neglected to obey or carry into effect any rules, orders or regulations made by the Minister (*t*).

The suspension of a relieving officer must be reported forthwith to the Minister (*u*). [720]

Duties in Relation to the Poor.—It is the duty of a relieving officer to receive all applications for relief made to him within his district and examine into the circumstances of every case by visiting the home of the applicant, if situate within his district, and by making

(*k*) Public Assistance Order, 1930, art. 159; 12 Halsbury's Statutes 1077.

(*l*) *Ibid.*, art. 160.

(*m*) *Ibid.*, art. 163; 12 Halsbury's Statutes 1077.

(*n*) L.G.A., 1933, s. 122; 26 Halsbury's Statutes 371; Public Assistance Order, 1930, art. 152.

(*o*) Ss. 4, 5; 7 Halsbury's Statutes 467.

(*p*) 7 Halsbury's Statutes 521-529.

(*q*) Poor Law Act, 1930, s. 12; 12 Halsbury's Statutes 975.

(*r*) *Ibid.*, s. 13 (2).

(*s*) Public Assistance Order, 1930, art. 157; 12 Halsbury's Statutes 1076.

(*t*) Poor Law Act, 1930, s. 13; *ibid.*, 976.

(*u*) Public Assistance Order, 1930, art. 158; *ibid.*, 1077.

all necessary enquiries. He should also visit each applicant before each meeting of the committee at which an application is to be considered and at such other times as may be necessary (*a*).

In any case of sudden or urgent necessity the relieving officer must give such relief, otherwise than in money, as may be requisite, whether or not the applicant is settled in the county or county borough for which the relieving officer acts. Such relief may be afforded either by giving an order for institutional relief, providing, if necessary, the means of conveyance, or by granting relief in kind (*b*). If any relieving officer refuses or neglects to give relief in any case of sudden or urgent necessity to any person not settled or usually residing in the county or county borough for which he acts, he may be required to do so by a justice of the peace, and is liable to prosecution for disobeying any such order (*c*).

A relieving officer has no absolute discretion in deciding what is a case of sudden or urgent necessity. It would appear that if he does not afford relief where that necessity exists he might be convicted of an offence (*d*). If he doubts the *bona fides* of an applicant he should by means of appropriate questions endeavour to elicit proof and without delay make such other enquiries as may be expedient in all the circumstances (*e*).

A relieving officer affords relief in a case of sudden or urgent necessity entirely on his own responsibility, and the council has no control over the amount of relief in kind which he may give; but it may be subject to scrutiny by the district auditor.

A district relieving officer must grant medical relief in any case of sickness or accident requiring medical attention, where this cannot be provided in any other way, such as by the attendance of a panel doctor under the National Health Insurance Act. Such medical relief may be afforded by giving an order on the district medical officer or by arranging for attendance by another medical practitioner (*f*). If there is delay in affording such relief he may be held criminally responsible; and it is no answer that the applicant was earning wages, if at the moment of making the application he was destitute and without the means of procuring the necessary medical assistance (*g*). A relieving officer may be ordered by a justice of the peace to give medical relief in any case of sudden and dangerous illness, and is liable to a fine not exceeding £5 for disobedience (*h*).

In the case of a poor person receiving medical attendance the relieving officer must visit the person as may be necessary and supply such relief in kind as the case may require. Although he should be guided by the opinion of the medical officer, the responsibility is with the relieving officer (*i*).

It is the duty of the relieving officer to administer all outdoor relief as ordered by the council or appropriate committee, unless other arrangements have been made by the council (*k*). A relieving officer

(a) Public Assistance Order, 1930, art. 167; 12 Halsbury's Statutes 1079.

(b) Poor Law Act, 1930, s. 17; *ibid.*, 978; Public Assistance Order, 1930, art. 21; 12 Halsbury's Statutes 1057.

(c) Poor Law Act, 1930, s. 79; 12 Halsbury's Statutes 1007.

(d) Under the Poor Law Act, 1930, ss. 139 or 145; 12 Halsbury's Statutes 1037, 1040.

(e) *Clark v. Jostin* (1873), 27 L. T. 762; 37 Digest 212, 86.

(f) Public Assistance Order, 1930, art. 167 (10); 12 Halsbury's Statutes 1080.

(g) *R. v. Curtis* (1885), 15 Cox, C. C. 746; 15 Digest 667, 7222.

(h) Poor Law Act, 1930, s. 17; 12 Halsbury's Statutes 978.

(i) Public Assistance Order, 1930, art. 167 (12); *ibid.*, 1080.

(k) *Ibid.*, art. 167 (8); *ibid.*, 1080.

has authority to give an order for the admission of a casual into a casual ward (l) ; but in practice it is unusual for casuals to be required to apply to the relieving officer for admission orders. [721]

Duties in Relation to Public Assistance Authority.—A relieving officer must attend all ordinary meetings of any guardians committee or relief committee acting for his district (m), and must observe and fulfil all lawful regulations or directions of the council or any superior officer affecting his office (n).

A council is acting *ultra vires* if it gives to the officer an order which is not a lawful one, and the fact that in performing an unlawful act the relieving officer is acting under the instruction of the council is therefore no protection to him from the consequences of the act for which he is personally liable.

Apart from his position as an officer of the council, the relieving officer is charged with an independent duty of affording relief in kind or admission to an institution in cases of sudden or urgent necessity, unless the grant of relief would be unlawful. No instruction of the council can extend or restrict the scope of the relieving officer's duties in this respect or can authorise him, when so acting, to grant relief in a case which is not one of sudden or urgent necessity, to grant more relief than, in his opinion, is requisite for relieving the necessity which is present, or to grant relief in a case which, though one of necessity, may not lawfully be relieved. On the other hand, no direction of the council could exonerate him for any failure to grant relief which is necessary and lawful.

The relieving officer is personally liable to account for the expenditure of relief granted by him. For the protection of the relieving officer, he is given a large measure of security of tenure of office ; and the emoluments of his office cannot be diminished without the consent of the Minister.

The relieving officer must report to the appropriate committee at its next meeting every application for relief made to him since its previous meeting, and any case in which relief has been discontinued by him before the expiration of the time for which it was ordered (o).

When authorised by the council, a relieving officer may conduct legal proceedings on their behalf before any court of summary jurisdiction (p).

Without the express order of the council, a relieving officer has no statutory duty to bury poor persons, but it is usual for him to be given a general authority to do so. [722]

Organisation of Duties.—Relief should be adapted to meet the needs and circumstances of each applicant ; and each case should be fully investigated. For this purpose it is necessary that the relief staff should be adequate, both in numbers and in qualifications. In view of the wide natural divergencies within localities, the Minister does not think it practicable to lay down rules of general application for the size of the relief districts or for the number of cases in the districts ; the object to be secured is that the relief staff should be sufficient to enable

(l) See title CASUALS.

(m) Public Assistance Order, 1930, art. 167 (1) ; 12 Halsbury's Statutes 1079. See title GUARDIANS COMMITTEE, Vol. VI., p. 266.

(n) *Ibid.*, art. 164 ; *ibid.*, 1078.

(o) *Ibid.*, art. 167 ; *ibid.*, 1079.

(p) L.G.A., 1933, s. 277 ; 26 Halsbury's Statutes 452.

the relieving officer to visit every new case and to keep in close touch with all other cases on his list (*g*).

In populous areas it is generally necessary to provide an assistant relieving officer and a clerk in each relief district. The relieving officer should report on cases brought to his notice, even although the applications are not made in the first instance by the persons themselves.

In making his enquiries a relieving officer should specially investigate the period during which the applicant is residing in the area, his earnings or any other means which he may have or become entitled to, and what relatives he may have who are liable and able to contribute towards the cost of any relief afforded. The relieving officer must report to the appropriate committee the result of his enquiries as to every particular application. [723]

Where persons are receiving outdoor relief frequent visits should be paid, and the relieving officer should arrange the mode of payment of relief so as to avoid unnecessary inconvenience to the recipient and should, as far as practicable, pay the relief personally (*r*). In some areas, the payment of relief is made by a pay clerk, or an officer on the staff of the council's finance officer. The relief is sometimes paid at a person's home, but unless a large staff is employed this is usually found to be impossible in very populous areas. On numerous occasions the Central Department has drawn attention to the duty of the relieving officer to pay relief at the homes of applicants where they are wholly incapable by reason of infirmity of attending at the pay station. It is sometimes necessary for an applicant to send another person for his relief. This arrangement is deprecated, as the relieving officer should be personally satisfied that the relief reaches the applicant. It was suggested by the Royal Commission on the Poor Laws and Relief of Distress (1910) that in some cases the help of voluntary agencies might be enlisted for the supervision of children in receipt of outdoor relief, and endeavours should be made to secure the services of persons connected with voluntary services, or charitable individuals who, in conjunction with the relieving officers, might act as friendly visitors for such cases. Such a practice needs to be adopted with care, and there must be the fullest co-operation between the officers and the friendly visitors. The visitors should not give care and assistance without the knowledge of the relieving officer, and the relieving officer should report to the committee wherever such assistance is given. Where such co-operation is adopted, councils should satisfy themselves that it is working smoothly and is productive of good results.

It is often possible to obtain valuable information from the reports made by the medical officer of the local education authority (*s*) of the examination of children attending elementary schools. [724]

Supervision by Public Assistance Officer.—The public assistance officer is responsible for the general supervision of the administration of outdoor relief as of the other sections of the public assistance department. For this purpose there is generally a superintendent relieving officer and a special staff under his direction at the central office. An effective system of visiting by investigating officers attached to the headquarters staff of the public assistance officer is of great value in securing the efficient administration of relief. The obtaining of a second

(*g*) M. of H. Circular, 1662, November 22, 1937.

(*r*) Local Government Board Circular, July 11, 1896.

(*s*) *Ibid.*, June 16, 1910.

opinion in a proportion of cases is a valuable complement to the work of the relieving officers. While being, on the one hand, a means of obtaining uniformity in the reporting system, it provides, on the other hand, a safeguard, by ensuring that the circumstances of relief recipients have been fully and correctly ascertained. Moreover additional information is sometimes thus secured which reveals the desirability of some further provision being made to secure that the needs of the applicant are fully met (*t*). Uniformity in the administration of the area controlled by a public assistance authority may be assisted by the appointment of a central supervising staff.

Supervision by the public assistance officer may be exercised not only by arranging for cross visiting of cases, but also by organising a proper system of inspection of case papers in the central office of the department. The actual system in operation must vary according to the size of the area. In small areas it has been found suitable to have a central case paper system in the central office so that there may be a record of every person in receipt of outdoor relief. [725]

A council may appoint a superintendent relieving officer or a general relieving officer for the whole or any part of the area (*u*). The duties of such officers are in the discretion of the council concerned. Prior to the transfer of the poor law functions under the L.G.A., 1929, it was customary for the Minister of Health to prescribe the duties of such officers. Under such an order the following duties were prescribed for a superintendent relieving officer: (1) To exercise a general superintendence over the officers of the out-relief department in the performance of their duties, and to see that the regulations made by the authority in regard to outdoor relief are strictly adhered to. (2) To attend all meetings of the relief committees and to see that the directions of the authority relating to relief or applicants for relief are duly carried out; also to attend any meeting of the authority or committee when so required by the authority or committee. (3) To carry out the instructions of the authority with regard to the investigation of cases independently of the enquiries made by the relieving officers. (4) To visit and report with regard to cases of persons receiving relief and to make enquiries in any cases where doubt exists as to the desirability of granting relief; and to report as to the ability of persons to contribute towards the relief and maintenance of their relatives chargeable to the authority. (5) To examine in conjunction with the clerk and his assistants, or otherwise, the various books kept by the several relieving officers, with a view to ascertaining that the books are accurately and properly kept. (6) To make the necessary enquiries, both within and beyond the limits of the area of the authority, as to the ability of persons to contribute towards the relief of their relatives chargeable to the authority. (7) Under the direction of the clerk to apply for and obtain the execution of warrants against persons leaving their families chargeable to the authority, and service of summonses against persons neglecting to maintain their families or other relatives. (8) To make enquiries as to the means of lunatics chargeable to the authority and, under the direction of the clerk, take such proceedings as may be legally available for obtaining the repayment of expenses of any lunatic. (9) To visit and report upon the case of non-resident poor chargeable to the authority, when required to do so. (10) To visit apprentices and young persons sent to service from the institution, when required, and report the result of such enquiries to the authority. (11) To arrange

(*t*) M. of H. Circular, 1662, November 22, 1937.

for and undertake the removal of persons to their place of settlement ; and to undertake such other duties of a similar character, being willing, if necessary, to travel beyond the limits of the area. [726]

The duties of a general relieving officer as prescribed by a similar order were as follows : (1) To make such enquiries falling within the several duties of a relieving officer at such times and in such manner as the authority or any committee of the authority might direct. (2) To make enquiries and report to the authority in respect of proceedings being instituted against offenders under the Vagrancy Act, 1824, or other similar statutes, and to assist, under the direction of the clerk, the prosecution of such offenders. (3) To act temporarily as the relieving officer of any relief district during the absence or incapacity of the officer in that district. (4) To perform such of the duties of any of the relieving officers as would take such relieving officer beyond the limits of the area. (5) To visit and report upon the cases of non-resident poor chargeable to the authority, when required to do so. (6) To visit apprentices and young persons sent to service from the institution if required and report thereon. (7) Under the direction of the clerk to apply for and obtain the execution of warrants against persons leaving their families chargeable to the authority ; service of summonses against persons neglecting to maintain their families or relatives ; and orders in bastardy. [727]

It should be emphasised that the above duties were prescribed under former poor law procedure.

Control by the Minister of Health.—As in the case of other senior poor law officers the clerk to the council must inform the Minister of every case in which a vacancy for a relieving officer remains unfilled for a period exceeding six weeks, or if filled by a temporary appointment (*a*).

The Minister has power to make an appointment of relieving officer in default of this being done by the council (*b*).

The Minister may, if he thinks fit, regulate the salary of relieving officers, as in the case of other officers concerned with the relief of the poor, but in practice it would be very unusual for the Minister to exercise this power (*c*).

The general duties of the relieving officer have been defined by the Minister in the Public Assistance Order (*d*). [728]

Books and Accounts.—The only books and accounts prescribed for relieving officers by the Minister of Health are the outdoor relief list, and the abstract thereof (*e*).

The outdoor relief list contains a record of the relief administered in money and in kind to each person in each week. It is also necessary for the relieving officer to keep records of the applications received for relief and the orders given thereon either in the application and report book or the application and relief order list (*f*). [729]

Cases under the Lunacy Acts.—The relieving officer has very important duties under the Lunacy Act, 1890, and the Mental Treatment Act, 1930, with regard to rate-aided patients (*g*). [730]

(*a*) Public Assistance Order, 1930, art. 162 (3) ; 12 Halsbury's Statutes 1077.

(*b*) Poor Law Act, 1930, s. 11 ; 12 Halsbury's Statutes 975.

(*c*) *Ibid.*, s. 10 (3) ; *ibid.*

(*d*) Art. 167 ; *ibid.*, 1079.

(*e*) Art. 167 (13) ; *ibid.*, 1080.

(*f*) See title OUTDOOR RELIEF, Vol. X., p. 74. It should be added that Art. 16 of the Relief Regulation Order, 1930, prescribes certain duties of the Relieving Officer in respect of the keeping of case-papers.

(*g*) See title PERSONS OF UNSOUND MIND, Vol. X., p. 164.

RELIGIOUS INSTRUCTION IN SCHOOLS

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Public Elementary Schools.—The following summarises the chief requirements for public elementary schools :

(i.) A copy of the "conscience clause" (a) must be conspicuously put up in every school.

(ii.) It must not be required as a condition of any child being admitted into or continuing in a school, that he shall attend or abstain from attending any Sunday school or place of worship (b).

(iii.) Neither must it be a condition that he shall attend any religious observance or any instruction in religious subjects in the school or elsewhere, if he has been withdrawn from these by his parent (b). The Act does not state how a parent is to signify his wish to withdraw his child, or how the withdrawal is to be effected. It is desirable, and it seems to be the usual practice, for the parent to intimate in writing to the head teacher his intention to withdraw his child from religious instruction or observance, but an oral notification would constitute sufficient notice.

No indication is given in the Act with regard to the extent of the withdrawal of a child, but it is submitted that, if the pupil can be given secular instruction in a part of the school other than the room in which the religious instruction is given, a parent would not be justified in withdrawing the child entirely from the school premises.

(iv.) If a child has been so withdrawn by his parent, he must not be required to attend school on any day exclusively set apart for religious observance by the religious body to which his parent belongs. It has been held that Ascension Day is a day exclusively set apart for religious observance by members of the Church of England. The right of withdrawal, apparently, rests in the parent even if the child does not in fact attend a religious service (c).

(v.) The religious instruction lesson must be given at the beginning or end, or at the beginning and end of a school meeting (d).

(vi.) The time of the religious instruction lesson must be inserted in the time-table approved by the Board of Education (d).

(vii.) It is no part of the duties of H.M. Inspectors to inquire into any instruction in religious subjects given at a public elementary school, or to examine pupils in religious knowledge or in any religious subject or book (e).

(viii.) If it comes to the knowledge of the local education authority that any of the above-mentioned conditions have been infringed, it is their duty to inform the Board of Education (f).

(ix.) In a school provided by a local education authority no religious catechism or formulary which is distinctive of any particular denomination may be taught (g). This is frequently referred to as the "Cowper-Temple" clause.

(a) Education Act, 1921, s. 27 (1) ; 7 Halsbury's Statutes 142.

(b) *Ibid.*, s. 27 (1) (a).

(c) *Marshall v. Graham* ; *Bell v. Graham*, [1907] 2 K. B. 112 ; 19 Digest 567, 85. (*The Darfield Case*.)

(d) S. 27 (1) (b). For the sake of convenience this lesson is usually given at the beginning of the morning meeting.

(x.) In non-provided schools the religious instruction given is, as regards its character, entirely in the hands of the managers, but it must be in accordance with any trust deed, if any, relating to it. If the trust deed provides for the reference to the bishop, or other superior authority, of questions as to whether the religious instruction given is in accordance with the trust deed, this power will not be interfered with. Apart from this, it remains a matter for the managers (*h*).

(xi.) The managers of a non-provided school may, if they so desire, have their school inspected or their pupils examined in religious subjects by an inspector other than His Majesty's Inspector. Not more than two days in a year may be given to this purpose (*i*).

(xii.) The Education Act, 1936, allows local education authorities to make grants for the building or reconstruction of non-provided schools for the benefit of senior children (*k*). Where such a grant has been made, the agreement between the authority and the managers may contain provisions for the giving of religious instruction in accordance with any syllabus in use in council schools, *i.e.* an "agreed syllabus" (*l*).

(xiii.) Where a non-provided school is attended by children whose parents desire them to receive religious instruction in accordance with a syllabus in use in the authority's council schools, and it would cause inconvenience to require the children to attend at a council school, then the required undenominational religious instruction must be given in the non-provided school, unless any special circumstances make this unreasonable (*m*).

(xiv.) Where the authority are satisfied that a school, whether council or non-provided, is attended by children whose parents desire them to receive religious instruction of a kind not given in the school, and are also satisfied that the children cannot with reasonable convenience attend a school where such instruction is given, the authority must allow those children to be withdrawn from school during the time allotted in the time-table for religious observance or instruction, provided that the authority are satisfied that suitable arrangements have been made for the children to receive the kind of religious instruction desired elsewhere (*n*). [731]

Secondary Schools and other Places of Higher Education.—(i.) It is stated in the Education Act, 1921 (*o*), that a council shall not require that any particular form of religious instruction or worship or any religious catechism or formulary which is distinctive of any particular denomination shall, or shall not, be taught, used or practised in any school, college or hostel aided but not provided by them.

(ii.) No pupil shall, on the ground of religious belief, be excluded from or placed in an inferior position in any school, college or hostel provided by the council (*p*).

(iii.) No catechism or formulary distinctive of any particular religious denomination shall be taught in any school, college or hostel provided by the council, except in cases where the council, at the request of parents of scholars, and at such times and under such conditions as the council think desirable, allow any religious instruction to be given in the school, college or hostel, otherwise than at the cost of the council; but in the exercise of this power no unfair preference is to be shown to any religious denomination (*q*).

(iv.) In a school or college receiving a grant from, or maintained

(*h*) S. 29 (5) (*c*). See also s. 46 (4) (*b*); 7 Halsbury's Statutes 155.

(*i*) S. 133 (1); *ibid.*, 200.

by a council, a scholar attending as a day or evening scholar must not be required, as a condition of being admitted into or remaining in the school or college, to attend or abstain from attending any Sunday school, place of religious worship, religious observance or instruction in religious subjects in the school or college or elsewhere. Also the times for religious worship, or for any lesson on a religious subject, shall be conveniently arranged for the purpose of allowing the withdrawal of any such scholar therefrom (r). [732]

(r) S. 72 (4).

REMAND HOMES

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Definition.—A remand home is, in its origin, a substitute for a prison; a place in which children and young persons under seventeen years of age may be kept in safe custody. As appears below, it can be used for those who are not offenders, as well as for those who are either found guilty of, or charged with, offences. [733]

Statutory Provisions.—The statutes are the Children and Young Persons Acts, 1933 and 1938, and the rules are the Remand Home Rules, 1933 (a). [734]

Local Authorities' Duties.—The local authorities concerned with remand homes are the councils of counties and county boroughs. By sect. 77 of the Act (b) it is the duty of every such council to provide a remand home for its own area. The remand home need not be in that area, and a council may establish its own home or join with another council in doing so. Arrangements may be made with the occupiers of premises for their use as a remand home. A child or a young person who may lawfully be remanded in custody to a place situate in the county or county borough may be sent to the remand home for that county or borough even if it be situate outside.

Any institution other than a prison, or a part of it, may be established as a remand home, subject to the condition that if the institution is wholly or partly supported out of public funds, the consent of the Government department concerned must be obtained. The old places of detention provided under the Children Act, 1908, may still be used as remand homes, and if they are adequate there is no obligation to provide new remand homes in addition. [735]

Exchequer Grants.—Sect. 104 of the Act enacts that grants may be made out of public funds of such sums and on such conditions as the Secretary of State with the approval of the Treasury may recommend towards the expenses of a county or county borough council in respect

Purposes for which Remand Homes Used.—Remand homes are used for several purposes.

(i.) A child or young person who has been arrested and cannot be admitted to bail pending his appearance in court, must, subject to certain specified exceptions, be sent to a remand home instead of being kept at a police station (c).

(ii.) A child or young person who is remanded or committed for trial and not released on bail is to be sent to a remand home instead of to prison, unless in the case of a young person who is too unruly or depraved. (If he has been sent to assizes or sessions after conviction with a view to a Borstal sentence he will be sent to prison (d).)

(iii.) As an exceptional method of treatment, a child or young person found guilty of an offence may be sent to a remand home as a punishment. The term must never exceed one month (e).

(iv.) A remand home is also a "place of safety" within the meaning of the statute (f). Therefore any child or young person who is about to be brought before a juvenile court as in need of care or protection, or as refractory, may be taken there till he can be brought before the court; and the court if it finds it necessary to adjourn the case, may by an interim order commit the child to the remand home (g). Children or young persons against whom certain offences have been committed may be removed, under search warrant, to a remand home (h). Children and young persons removed, under order, from a voluntary home (i), or foster children taken by order from unsuitable persons or premises (k), may also be placed in a remand home as a place of safety.

(v.) Children and young persons awaiting reception in an approved school may be committed to the remand home (l). [737]

Escape from Remand Home.—If a child or young person escapes from a remand home he can be apprehended without warrant and brought back. Penalties are provided for assisting an escape or concealing those who escape (m). [738]

Inspection.—The Secretary of State causes remand homes to be inspected (n). [739]

Administration.—The power of the Secretary of State to make rules as to the places to be used, their inspection, the classification, treatment, employment and control of the juveniles detained, and for their being visited by persons appointed for the purpose, is derived from sect. 78 (3) of the Act.

The rules provide for the separation of boys over ten years of age from girls except during instruction or employment or meals. The inmates may wear their own clothes, but when it is desirable, on sanitary or other grounds, clothing will be supplied.

Schoolroom instruction or practical work is to be given as far as

(c) Children and Young Persons Act, 1933, s. 32; 26 Halsbury's Statutes 192.

(d) *Ibid.*, s. 33; *ibid.*, 193.

(e) *Ibid.*, s. 54; *ibid.*, 204.

(f) *Ibid.*, s. 107; *ibid.*, 238.

(g) *Ibid.*, s. 67; *ibid.*, 210.

(h) *Ibid.*, s. 40; *ibid.* 197. See also s. 26 (6); *ibid.* 190.

(i) *Ibid.*, s. 95; *ibid.*, 231.

(k) Children Act, 1908, s. 5; 9 Halsbury's Statutes 797.

(l) Children and Young Persons Act, 1933, s. 69; 26 Halsbury's Statutes 211.

(m) *Ibid.*, s. 78 (4); *ibid.*, 217.

(n) *Ibid.*, s. 78 (3); *ibid.*

may be possible, and at least two hours a day must be allowed for recreation and exercise. Books and games must be provided. The inmates may be employed on the work of the home, but for those under twelve years of age there must be only light work, such as making their own beds or cleaning their own boots. [740]

Adequate arrangements must be made for religious exercises, and reasonable facilities must be given for visits by relatives and friends and for the sending or receiving of letters.

Arrangements must be made for a doctor to attend the remand home. If an inmate has to be removed to a hospital for treatment or can no longer be detained because the doctor is of opinion that on medical grounds he must not be further detained, the superintendent of the home must notify the clerk of the court in the case of a remanded child or young person, and must notify the Secretary of State if it be a case of detention by way of punishment (o). Death, serious illness, infectious disease or accident must be immediately reported to the parent, the county or county borough council and the Chief Inspector, Children's Branch, H.O. A sudden or violent death must also be notified by the council to the coroner.

The rules state that discipline shall be maintained by the personal influence of the superintendent. Necessary punishment is to consist of temporary loss of recreation, reduction within certain limits of quality or quantity of food, separation from other inmates, again with defined restrictions as to conditions of such separation, and, for boys only, moderate personal correction by the superintendent himself, to be at once recorded in the log-book. The log-book is to be in addition to a book containing a record of admissions and discharges, and is to show every event of importance and every punishment. The books are to be open to inspection by or on behalf of the council or the chief inspector.

Remand homes are to be regularly visited by appointed visitors, including women. [741]

London.—Under sect. 38 of the Children and Young Persons Act, 1932 (now sect. 77 of the 1933 Act), the L.C.C. is in the same position as other county councils. [742]

(o) See also Children and Young Persons Act, 1938, s. 6.

REMOVAL

See SETTLEMENT AND REMOVAL.

REMUNERATION OF OFFICERS

See APPOINTMENT AND DISMISSAL OF OFFICERS; OFFICERS OF LOCAL AUTHORITIES; STAFF.

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REPAIR OF ROADS

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See also titles :

HIGHWAY AUTHORITIES ;
HIGHWAY NUISANCES ;
PRIVATE STREETS ;

ROADS AND STREETS ;
ROADS CLASSIFICATION.

Introductory Note.—By the common law the inhabitants of every township were liable to repair the roads therein, unless those roads were repairable by some person or body of persons. Private liability to repair may still exist *ratione tenuræ*, *ratione clausuræ*, by prescription or by statute. The nature of the public liability has changed. It was imposed upon the inhabitants of the parish by 2 & 3 Ph. & Mar. c. 8, and was enforceable by indictment of the inhabitants. A highway so repairable was described as a "highway repairable by the inhabitants at large," a term of convenience which has become a term of law and which in its origin was no doubt designed to differentiate highways repairable by the public from highways repairable by private persons (a). As a result of modern legislation it is now uncertain whether the expression "highway repairable by the inhabitants at large" includes all highways the repair of which is a duty of a highway authority.

Under the Highways and Locomotives (Amendment) Act, 1878 (b), a new class of roads, then known as "main roads," was created. Originally main roads were (1) roads which had ceased to be turnpike roads between December 31, 1870, and August 16, 1878; (2) roads which were turnpike roads on August 16, 1878 but were disturnpiked after that date; (3) any road declared to be a main road by the county authority, *i.e.* the justices in quarter sessions.

(a) See *per* HANNEN, J., in *Gibson v. Preston Corporation* (1870), L. R. 5 Q. B. 218, at p. 220; 26 Digest 357, 334.

(b) 9 Halsbury's Statutes 166 *et seq.*

By sect. 13 of the Act of 1878 one-half of the cost of maintenance of main roads was to be paid by the county authority.

By sect. 3 (viii) of the L.G.A., 1888 (c), the functions of quarter sessions in relation to main roads were transferred to county councils, and by sect. 11 (d) the entire burden of maintenance, repair, etc., of such roads was imposed upon county councils. New classes of main roads have been brought into existence (e), which need not here be discussed in detail, and such roads (*inter alia*) are now known as "county roads" (f). The better opinion appears to be that a county road remains a highway repairable by the inhabitants at large, and becomes distinguished from the general class of such highways by the fact that the duty to repair is imposed by statute on the county, while the liability to repair remains upon the inhabitants at large, *i.e.* the inhabitants of the parish. The distinction between duty and liability to repair will be found well illustrated in the argument of DANCKWERTS, K.C., in *A.-G. v. Staffordshire County Council* (g). This question is of practical importance in relation to the enforcement of the liability to repair, and will be considered later under that heading.

By sect. 10 of the Development and Road Improvement Funds Act, 1909 (h), provision is made as to the status of new roads constructed by highway authorities with the assistance of a grant from the Minister of Transport. By sub-sect. (2), where the authority to whom the advance is made are a county council, the new road, when constructed, is to be a county road, and in any other case is to be a highway repairable by the inhabitants at large. The use of the expression "in any other case" in this sub-section seems necessarily to exclude county roads from the class "highway repairable by the inhabitants at large," so far, at any rate, as that term relates to roads constructed by highway authorities under the Act of 1909. [743]

Repair by Individuals.—As indicated *supra*, private liability to repair may exist in four ways—*ratione tenuræ*, *ratione clausuræ*, by prescription or by statute.

Liability Ratione Tenuræ.—This is the commonest form of private liability to repair. The liability arises from the tenure of particular lands. The liability, when admitted or proved to exist, is enforceable in respect of the lands to which it attaches against the occupier of those lands (i) or any part thereof (k). If the occupier of part is made liable for the whole cost he is entitled to indemnity from the owner (l), and the owner is entitled to contribution *pro rata* from the owners of the remaining portions (m).

In some cases lands chargeable *ratione tenuræ* with the repair of a road are exempt from contribution to the highway rate, *i.e.* in modern times to that portion of the general rate levied in respect of

(c) 10 Halsbury's Statutes 689.

(d) *Ibid.*, 693.

(e) See title ROADS CLASSIFICATION.

(f) L.G.A., 1929, s. 29; 10 Halsbury's Statutes 903.

(g) [1905] 1 Ch. 336; 26 Digest 353, 797.

(h) 9 Halsbury's Statutes 213.

(i) 1 Roll. Abr. 300; *R. v. Barker* (1890), 25 Q. B. D. 213; 26 Digest 369, 944.

(k) *Esher and Dittons U.D.C. v. Marks* (1902), 71 L. J. (K. B.) 309; 26 Digest 368, 943.

(l) See *Baker v. Greenhill* (1842), 3 Q. B. 148; 26 Digest 580, 2704.

(m) *R. v. Bucklugh (Duchess)* (1704), 1 Salk. 358; 26 Digest 368, 942; *Esher and Dittons U.D.C. v. Marks* (1902), 66 J. P. 243; 26 Digest 368, 943.

highways (*n*). Liability *ratione tenuræ* continues if the road to which the liability relates becomes a county road (*o*), a rule which may be considered to be based on the distinction between liability and duty to repair, but is extinguished if the road is destroyed (*p*), or if it is so improved by the highway authority that it has ceased to exist in its old form (*q*), or if the liability be transferred to the inhabitants at large under the Highway Act, 1835, sect. 62 or sect. 93 (*r*), the Highway Act, 1862, sect. 35 (*s*), the Highway Act, 1864, sect. 24 (*t*), or the P.H.A., 1875, sects. 148, 152 (*u*). [744]

Liability Ratione Clausuræ.—This form of liability is an incident of the common law right to deviate over adjoining land when the highway is foundrous and impassable. When such a right exists the owner of the adjoining land can enclose it only at the risk of becoming liable to repair the highway *ratione clausuræ*, for he may enclose land over which the right of deviation exists (*a*). [745]

Liability by Prescription.—A liability by prescription may be presumed to exist where an individual or a body politic or corporate has in fact repaired a road for many years (*b*). [746]

Liability by Statute.—Such a liability is imposed by the express terms of a statute, usually by a local Act authorising interference with an existing highway and requiring the construction and maintenance of a new way in substitution (*c*). It is probable that in such circumstances a similar liability exists at common law. [747]

Repair by Custom.—This is a difficult subject. It is commonly said that a particular township within a parish may, by custom, be bound to repair the highways within its boundaries to the exoneration of the rest of the parish (*d*).

The subject is now of little practical importance, and it is unlikely that new instances will be discovered. It may be regarded as a curious survival, for it will be found that the statements in text-books, and indeed in judgments, that the inhabitants of the parish were liable at common law to repair the highways in the parish (*e*), cannot be substantiated by direct authority. The liability of the parish was declared by statute in 1555 (*f*), and is thus of sufficient antiquity, but

(*n*) Highway Act, 1835, s. 33; 9 Halsbury's Statutes 64; *R. v. Heath* (1866), L. R. 1 Q. B. 218; 26 Digest 370, 953; *Lonsdale v. Lowther Overseers* (1896), 60 J. P. 297; 26 Digest 371, 961. See *R. & V.A.*, 1925, s. 64 (1) (*e*); 14 Halsbury's Statutes 683, and L.G.A., 1929, s. 38; 10 Halsbury's Statutes 913.

(*o*) L.G.A., 1888, s. 97; L.G.A., 1929, s. 29 (1); 10 Halsbury's Statutes 760, 903.

(*p*) *R. v. Bamber* (1843), 5 Q. B. 279; 26 Digest 371, 964; *R. v. Barker* (1890), 25 Q. B. D. 213; 26 Digest 369, 944.

(*q*) *R. v. Pickering Township* (1877), 41 J. P. 564; 26 Digest 371, 968.

(*r*) 9 Halsbury's Statutes 79, 104.

(*s*) *Ibid.*, 134.

(*t*) *Ibid.*, 149.

(*u*) 13 Halsbury's Statutes 685, 687.

(*a*) See the Highway Act, 1862, s. 46; 9 Halsbury's Statutes 140.

(*b*) See 16 Halsbury (2nd Ed.), p. 283.

(*c*) See *R. v. Sheffield Canal Co.* (1849), 13 Q. B. 913; 26 Digest 367, 929.

(*d*) *R. v. Ecclesfield (Inhabitants)* (1818), 1 B. & Ald. 348; 26 Digest 358, 836; *R. v. Barnoldswick (Inhabitants)* (1843), 4 Q. B. 499; 26 Digest 363, 891.

(*e*) "By common law or of common right, the inhabitants of the parish at large are bound to repair the highways" (*R. v. Great Broughton (Inhabitants)* (1771), 5 Burr. 2700; 26 Digest 365, 907). See also *R. v. Shoreditch (Inhabitants)* (1639), March, 26; 26 Digest 358, 838; *Austin's Case* (1672), 1 Vent. 189; 26 Digest 260, 2; 2 Com. Dig. 287, title "Chimin"; *R. v. Leake (Inhabitants)* (1833), 5 B. & Ad. 469; 26 Digest 290, 225.

(*f*) The Statute for the mending of Highways (2 & 3 Ph. & Mar. c. 8).

examination of the surviving records of proceedings of earlier date will fail to produce a single example of a case in which the liability of the parish is even suggested. The most convenient sources to which reference may be made for the study of this subject are the two volumes published by the Selden Society under the title "Public Works in Mediæval Law." In these volumes there are printed extracts from the Coram Rege Roll and other records, including very numerous instances of proceedings against "the men of the township of _____," but no single instance of proceedings against the inhabitants of a parish in respect of the non-repair of roads.

Customary liability of a township is, in the comparatively modern cases in which it has been held to exist, founded on a presumed bargain, made before the time of legal memory, between the township and the remainder of the parish, that each should take on itself the repair of its own roads (g). In truth, such a bargain is unknown to the law; no such liability could be either imposed or determined by agreement (h), and it may be suggested with some confidence that the instances of township liability which survived the Statute of Philip and Mary were the result of inadvertence. [748]

It may be convenient at this stage to discuss a closely related topic. Whatever may have been the rule at common law, it is sufficiently established by statute that the inhabitants of the parish are *primâ facie* liable to repair the highways therein, and the inhabitants can only avoid this liability by proving that some person, or body politic or corporate, is liable. When a subdivision of a parish is liable to maintain its own highways it is exempt from liability to repair the highways in the remainder of the parish (i). Such a subdivision must be an area known to the law, e.g. a farm which does not constitute a complete vill cannot be such an area (k), and if omitted from a rate will be held to have been improperly omitted.

A subdivision of a parish may be exempt by custom from the liability to repair the highways in the remainder of the parish, even when there are in the subdivision no roads repairable by the inhabitants (l). [749]

Extent of Public Liability.—The liability of the inhabitants to repair extends *primâ facie* to all public highways in the parish. This liability continued notwithstanding that a road was subject to a Turnpike Act, even when the trustees were expressly directed to repair out of the produce of the tolls (m). This *primâ facie* liability has, however, been limited by statute. By sect. 23 of the Highway Act, 1835 (n), no road or occupation way made at the expense of any individual

(g) PARKE, B., in *R. v. Barnoldswick (Inhabitants)* (1843), 4 Q. B. 499, at p. 502; 26 Digest 363, 391.

(h) 1 Ventris 90, cf. *R. v. Scarisbrick (Inhabitants)* (1837), 6 Ad. & El. 509; 26 Digest 365, 399.

(i) By the Highway Act, 1835, s. 5; 9 Halsbury's Statutes 51, the word "parish" is to be construed to include parish, township, tithing, rape, vill, wapentake, division, city, borough, liberty, market town, franchise, hamlet, precinct, chapelry or any other place or district maintaining its own highways.

(k) *R. v. Freeman* (1859), 33 L. T. (O. S.) 220, per CAMPBELL, C.J.; 38 Digest 457, 223.

(l) *R. v. Barnoldswick (Inhabitants)*, *supra*; but see *R. v. Rollett* (1875), L. R. 10 Q. B. 469; 26 Digest 365, 912.

(m) *R. v. Netherthong (Inhabitants)* (1818), 2 B. & Ald. 179; 26 Digest 366, 914; *R. v. Preston (Inhabitants)* (1838), 2 Lew. C. C. 193; 26 Digest 366, 916.

(n) 9 Halsbury's Statutes 59. See also Highway Act, 1862, s. 36; *ibid.*, 185.

or set out as a private driftway or horsepath under an inclosure award is repairable by the inhabitants unless three months' notice of dedication has been given to the surveyor and the road is made to the satisfaction of the surveyor and two justices.

The fact that a road is not repairable by the inhabitants does not affect the question of the public right of passage, which depends solely upon dedication (o).

The provisions of sect. 23 brought into existence a class of highway not repairable by anyone, for the landowner on whose land such a road is made is not liable to repair it, whether it be dedicated or not (p), and the inhabitants are not only, by the express terms of the statute, exempt from liability to repair, but are also without any right to repair, so that any repair done by the surveyor is a trespass (q). The position has been modified by certain provisions of the Public Health Acts and the Private Street Works Act, 1892, which will be considered later. It may be well to note here that there is now a limited power to compel the repair of private streets under sect. 19 of the P.H.A. Amendment Act, 1907 (r). [750]

Nature of Public Liability.—The liability to repair at common law has been defined as a duty to make the road reasonably passable at all times of the year. There is no express duty to use stone or other hard substances, but by some means, including the use, if necessary, of stone or other hard substances, the road must be put in such repair as to be reasonably passable for the ordinary traffic of the neighbourhood (s).

It seems possible that there may be highways dedicated for use at certain times only. If so, such highways form an exceptional class. In *R. v. Brailsford (Inhabitants)* (t), there was a conflict of evidence as to whether a road was passable in winter. POLLOCK, C.B., expressed a doubt whether there could be dedication of a road impassable in winter. A new trial was ordered on the ground of misdirection, but not on this point.

Other instances are capable of explanation as indicating nothing more than user by way of deviation (u). For example, a bridge which the public have a right to use in times of flood and which is kept locked at other times is probably best explained in this way (a). It is a general rule that dedication for a period is unknown to the law of England; dedication must be in perpetuity, a rule which is commonly expressed in the old maxim "once a highway, always a highway" (b). [751]

The liability to repair so as to be fit for traffic must not be construed

(o) *Roberts v. Hunt* (1850), 15 Q. B. 17; 26 Digest 362, 879.

(p) *R. v. Wilson* (1852), 18 Q. B. 348; 26 Digest 363, 880.

(q) See *Eyre v. New Forest Highway Board* (1892), 56 J. P. 517; 8 T. L. R. 648; 26 Digest 260, 5.

(r) 13 Halsbury's Statutes 917.

(s) *R. v. High Halden (Inhabitants)* (1859), 1 F. & F. 678; 26 Digest 353, 789. But there were roads "wont to be made with great stones" even in the early middle ages, when paving was unknown. See *R. v. Township of Glapthorn*, Public Works in Mediaeval Law II., 102.

(t) (1860), 2 L. T. 508; 26 Digest 307, 386.

(u) See *post*, p. 330.

(a) *R. v. Northampton (Inhabitants)* (1814), 2 M. & S. 262; 26 Digest 306, 384; *R. v. Buckingham (Marquis)* (1815), 4 Camp. 189; 26 Digest 307, 385; *Dawes v. Hawkins* (1860), 8 C. B. (N. S.) 848; 26 Digest 295, 270.

(b) *Corsellis v. L.C.C.*, [1907] 1 Ch. 704; 26 Digest 289, 222; *Dawes v. Hawkins*, *supra*.

to justify the improvement of the road, an operation unknown to the common law and which needs statutory authority, or an increase of the burden upon the landowner. As to what improvements are lawful, see title ROAD IMPROVEMENT.

It is not easy to reconcile such cases as *R. v. High Halden (Inhabitants)* (c) with the cases which illustrate the limitation of the type of work which may be done, such as *Sutcliffe v. Surveyors of Highways of Sowerby* (d); *Mercer v. Woodgate* (e); *Arnold v. Blaker* (f); *Robertson v. Bristol Corporation* (g); and *Radcliffe v. Marsden U.D.C.* (h), except on the basis of a distinction between repair and improvement. Nevertheless the road must be fit for all the traffic of the neighbourhood, and this is not and never has been a fixed class. The traffic of the neighbourhood may increase in volume, and from time to time new types of vehicle are devised, and the needs of this altered traffic must be met (i). If a new standard of surface is required, the new standard must be provided. Thus the treatment of roads with tar is a proper alteration of the standard of repair, though the use of this or any new method requires care (k). The modern practice of constructing a road surface of several inches of concrete has not been considered in the Courts. When such a road is made as a new road on land purchased by the highway authority there is no difficulty, but in the case of old roads it is open to doubt whether such an alteration, which must increase the burden on the landowner, can be justified as necessary for the traffic of the neighbourhood, and the duty to repair cannot be interpreted with reference to what is now known as "through traffic." There is no express statutory power to convert a road into a concrete road, as there is to convert a road into a stoned road (l). The "vesting" of a road in the highway authority does not affect the position. [752]

Highway Authorities.—Under modern legislation the duty of repairing roads is imposed upon highway authorities. In respect of unclassified roads in urban districts and non-county boroughs the highway authority is the urban district or borough council. In respect of county roads (including all roads in rural districts) the highway authority is the county council. In a county borough the county borough council are the highway authority for all roads. In respect of trunk roads under the Trunk Roads Act, 1936 (m), and of roads constructed by him under sect. 8 of the Development and Road Improvement Funds Act, 1909 (n), the Minister of Transport is the highway authority. This

(c) (1859), 1 F. & F. 678; 26 Digest 353, 739.

(d) (1859), 1 L. T. 7; 26 Digest 329, 612.

(e) (1869), L. R. 5 Q. B. 26; 26 Digest 417, 1357.

(f) (1871), L. R. 6 Q. B. 433; 26 Digest 417, 1359.

(g) [1900] 2 Q. B. 198; 26 Digest 527, 2259.

(h) (1908), 72 J. P. 475; 26 Digest 353, 794.

(i) Cf. the provisions of L.G.A., 1929, s. 32; 10 Halsbury's Statutes 906, as to "reasonable improvement connected with the maintenance and repair" of a road, a phrase not yet defined or interpreted.

(k) *Dell v. Chesham U.D.C.*, [1921] 3 K. B. 427; 26 Digest 408, 1290.

(l) Highway Act, 1864, s. 48 (1); 9 Halsbury's Statutes 160, but note that the Minister of Transport has, under s. 6 of the Roads Improvement Act, 1925; 9 Halsbury's Statutes 226, power, either by himself or through any authority or other organisation approved by him, to conduct experiments or trials for the improvement of construction of roads.

(m) 29 Halsbury's Statutes 183 *et seq.*

(n) 9 Halsbury's Statutes 212. See the Road Traffic Act, 1930, s. 57 (1); 23 Halsbury's Statutes 652.

subject is dealt with in detail in the title **ROADS CLASSIFICATION**. It is sufficient here to say that all highway authorities either are, or have the powers of, surveyors of highways, and that their primary duty is to keep in repair the roads in respect of which they are the highway authority. In order to enable highway authorities to perform this duty, powers have been conferred on them by a series of statutes, but these powers are supplemented by the common law, and it is necessary to consider the common law as well as the relevant statutes. [753]

Statutory Powers. Materials.—Powers are conferred on surveyors of highways by sects. 51—55 of the Highway Act, 1835 (o), to obtain materials for the repair of roads. Under these sections the surveyor is authorised to search for, dig, get and carry away gravel, sand, stone or other materials in any waste land or common ground, river or brook within the parish, or if sufficient cannot be got there, then within any other parish where such materials are likely to be found, provided sufficient be left for the use of that other parish. It is also lawful to gather stones lying upon any lands or grounds, whether enclosed or not, within the parish (p). For the materials taken under these powers no compensation is payable, but satisfaction must be made for damage done to lands or grounds in the process of gathering.

So far as the power already discussed relates to getting materials in a river or brook it is confined to a river or brook within common land (q), otherwise the provisions as to getting materials in enclosed land apply (r).

As to what is common ground within the meaning of this provision, see *Scott v. Towyn R.D.C.* (s). If a common is subject to an order under the Commons Act, 1876 (t), or a scheme under the Metropolitan Commons Acts, 1866 and 1869 (u), or Part I. of the Commons Act, 1899 (a), or, being situate in the Metropolitan Police District, is subject to a private or local Act having for its object the preservation of the common as an open space, or if it is vested in the National Trust, the rights of the highway authority cannot be exercised except with the consent of the persons having the regulation of the common, or an order of justices, the grant or refusal of which is in their absolute discretion (b).

Materials authorised to be searched for, dug or got, may be obtained by blasting where that method is usual and necessary (c). [754]

In addition to the power to obtain materials without payment, if sufficient materials cannot be obtained, they may be dug for on enclosed lands. In this case a licence in writing from the justices is required, and, as in the case of entry on enclosed lands for the purpose of gathering stones, a calendar month's notice in writing must be given to the owner and occupier to appear before the justices to show cause why such materials should not be had from his land.

(o) 9 Halsbury's Statutes 72—75.

(p) *Alresford R.S.A. v. Scott* (1881), 7 Q. B. D. 210; 26 Digest 357, 829.

(q) *Allinson v. Cumberland County Council* (1907), 97 L. T. 187; 26 Digest 355, 813.

(r) *Infra*.

(s) (1907), 5 L. G. R. 1050; 26 Digest 355, 812.

(t) 2 Halsbury's Statutes 579.

(u) *Ibid.*, 567, 579.

(a) *Ibid.*, 607.

(b) Commons Act, 1876, s. 20; 2 Halsbury's Statutes 595; National Trust Act, 1907 (c. cxxxvi), s. 36; *Hayes Common Conservators v. Bromley R.D.C.*, [1897] 1 Q. B. 321; 26 Digest 355, 814.

(c) *Whitson v. Blairgowrie District Committee* (1897), 24 R. (Ct. of Sess.) 519; 26 Digest 357, h.

As compensation is payable, and the method of obtaining the authority of the justices is cumbersome, materials are usually purchased. Power was given by sect. 9 (2) of the Highway Act, 1862 (*d*), to highway boards to acquire and hold lands for the purposes of the Highway Acts, and under this power authorities which are the successors of highway boards may purchase land for the purpose of getting materials. As county councils have the powers of highway boards (*e*), the only authorities who have not this power are district councils who are the successors of surveyors and not of highway boards.

Materials may be purchased by virtue of sect. 46 of the Highway Act, 1835, or sect. 52 of the Highway Act, 1864 (*f*).

Pits made in digging for materials must be fenced forthwith.

Stone may not be taken from sea-beaches when its removal would cause damage to adjoining land by inundation or increased danger of encroachment by the sea. [755]

Temporary Deviation and Closing.—While a road is under repair it may become impassable. The obstruction of a highway, whether by excavation therein or by some erection thereon is a public nuisance at common law, and highway authorities have no greater rights to obstruct the highway than individuals have, save in so far as they are expressly authorised by statute (*g*). It appears, however, to be established that at common law a highway authority may do what is reasonably necessary for the discharge of their functions (*h*). If this proposition is not wholly established by authority it is submitted that it is a correct view of the common law and that such obstruction as is reasonably and necessarily incident to the discharge of the duty to repair is lawful. This view derives some support from statute, for by sect. 25 of the Highway Act, 1835 (*i*), power is conferred on the surveyor to make a road through the grounds adjoining any ruinous or narrow part of any highway while the old road is under repair. This power is largely obsolete because a large class of property is exempt, and because the expense of making a temporary road suitable for modern traffic would be considerable as respects both construction and compensation. In modern times, therefore, express statutory power has been given to highway authorities to close roads for repair. [756]

Sect. 4 of the London Traffic Act, 1924 (*k*), contains special provisions relating to the closing of streets for the purpose of works of road maintenance by road authorities within the London traffic area. It is the duty of every road authority within the area (*l*) to submit to the Minister of Transport, on or before such half-yearly dates in each year as the Minister may fix, a statement of all such works of road maintenance and improvement which will be commenced within the next half-yearly period as will involve the closing to vehicular traffic of any part of any street either absolutely or to the extent of one-third or more of the width of the carriageway.

(*d*) 9 Halsbury's Statutes 126.

(*e*) L.G.A., 1888, s. 11; 10 Halsbury's Statutes 693.

(*f*) 9 Halsbury's Statutes 69, 161.

(*g*) See *per* VAUGHAN WILLIAMS, L.J., in *Torrance v. Ilford U.D.C.* (1909) 73 J. P. 225; 26 Digest 405, 1273.

(*h*) See, *e.g.* *R. v. Richmond Justices* (1860), 24 J. P. 422; 26 Digest 457, 1736.

(*i*) 9 Halsbury's Statutes 62.

(*k*) 19 Halsbury's Statutes 175.

(*l*) As defined in the First Schedule; 19 Halsbury's Statutes 188.

The Act contains no express power to close roads for repair, but the statute must be taken to assume that the power exists.

Specific power to close roads for repairs is given by sect. 47 (1) of the Road Traffic Act, 1930 (*m*), which empowers a highway authority, if satisfied that traffic on any road for the maintenance of which they are responsible should, by reason of works of (*inter alia*) repair being required or being in progress, be restricted or prohibited, by order to restrict or prohibit the use of the road by vehicles. Notice of the intention to make such an order must be advertised, and consideration must be given to the existence of alternative routes. No order may continue in force for more than three months except with the approval of the Minister of Transport.

An order, to operate for not more than seven days, may be made without notice in an emergency. Restrictions under the section do not apply to tramcars or trolley vehicles operated under Act of Parliament or statutory order. [757]

Enforcement of Liability.—The duty or liability to repair is enforced either by proceedings before justices in petty sessions or by indictment, and indictment may be either at common law or under a statute. Proceedings in respect of highways repairable otherwise than by a highway authority have generally been by indictment at common law, and it cannot be regarded as certain that such proceedings can be taken under statute if the highway in question was at any time in a highway district. In the case of highway authorities the position is complicated and it will be well to deal first with statutory remedies.

By sect. 94 of the Highway Act, 1835 (*n*), if any highway is out of repair, a summons may be issued on the sworn information of one credible witness, requiring the surveyor of the parish, or other person or "body politic or corporate" chargeable with such repairs, to appear at a petty sessional court. The justices may either appoint a competent person to view the highway, or any two of them may themselves view, and if satisfied as to the non-repair, may impose a penalty not exceeding £5 and make an order requiring the defendant to repair within a limited time. By sect. 95, if the duty to repair is denied, the justices are to direct a bill of indictment to be preferred at the next assize or quarter sessions. Sects. 18 and 19 of the Highway Act, 1862 (*o*), contain similar provisions relating to roads in a highway district, the initial proceedings to be against the highway board and the waywarden of the parish.

Urban district councils are now surveyors of highways within their districts (*p*), and, though they may be summoned under sect. 94 of the Act of 1835, they cannot be indicted under that Act, since no indictment lay against the surveyor (*q*). County councils are successors of highway boards, but under sect. 19 of the Act of 1862 no indictment could be preferred against a highway board and a county council cannot be indicted as successor to a board. Under both Acts the proper course is to indict the inhabitants of the parish within which the

(*m*) 23 Halsbury's Statutes 645.

(*n*) 9 Halsbury's Statutes 105.

(*o*) *Ibid.*, 131, 132.

(*p*) P.H.A., 1875, s. 144; 13 Halsbury's Statutes 683.

(*q*) *Young v. Davis* (1863), 2 H. & C. 197; 26 Digest 398, 1241; *Loughborough Highway Board v. Curzon* (1886), 16 Q. B. D. 565; 26 Digest 384, 1133; *R. v. Poole Corpn.* (1887), 19 Q. B. D. 602; 26 Digest 376, 1015.

highway lies. It is a good defence to such an indictment that some other body or person is liable to repair.

Under the Highways and Locomotives (Amendment) Act, 1878, the county became liable to contribute to the cost of repairing main roads, and there was clearly no transfer of liability. Whether, as a result of the L.G.As., 1888 and 1929, there has now been such a transfer of liability to the county council as will (a) afford a defence to an indictment of the parish, (b) enable the county council to be indicted, remains in doubt. There is no authority upon this question, but the better opinion seems to be that the county council is not indictable in the absence of an express provision to that effect. Reference should be made to the case of *A.-G. v. Staffordshire County Council* (r), more particularly to the points raised in argument by DANCKWERTS, K.C.

There is, however, yet another statutory remedy under sect. 10 of the Highways and Locomotives (Amendment) Act, 1878 (s). Proceedings under this section are initiated by a complaint to the county council, who may make an order limiting a time within which the highway authority must perform its duties. If liability to repair is disputed (but not otherwise) an indictment may be preferred by direction of the county council at the next practicable assizes, with a view to determining the liability of the defaulting authority. In proceedings under this section the indictment is against the highway authority, not against the inhabitants (t). No provision has been made for cases in which the county council are themselves the highway authority, and the position results that proceedings by way of indictment for non-repair of a highway cannot be taken against a county council. [758]

In addition to the statutory remedy by indictment, an indictment lies at common law, and this remedy is not excluded even where the statutory remedy by indictment is available (u). An indictment at common law may be preferred by any person in the name of the Crown against the persons liable to repair, normally the inhabitants of the parish, who need not be named (a).

It is to be noted that an appeal against a conviction on indictment at common law for non-repair of a highway lies to the Court of Appeal and not to the Court of Criminal Appeal (b).

One other special remedy should be referred to. When sect. 65 of the Railways Clauses Consolidation Act, 1845, is incorporated with the special Act of a railway company, and the company are by law required to keep in repair any bridge, fence, approach, gate or other work, an order may be made by two justices requiring the company to put such work into complete repair. [759]

Civil Liability.—It is well settled that highway authorities are not liable in damages in respect of non-feasance, *e.g.*, for injury caused by omitting to repair a road (c). It is equally well settled that for acts of

(r) [1905] 1 Ch. 336 ; 26 Digest 353, 797.

(s) 9 Halsbury's Statutes 170.

(t) *R. v. Wakefield Corporation* (1888), 20 Q. B. D. 810 ; 26 Digest 385, 1140.

(u) *Ex parte Bartlett* (1860), 30 L. J. (M. C.) 65 ; 26 Digest 883, 1124.

(a) *Walker v. Measure* (1610), 2 Roll. Abr. 79 ; 26 Digest 377, 1019.

(b) Supreme Court of Judicature (Consolidation) Act, 1925, s. 24 ; 4 Halsbury's Statutes 160.

(c) *Young v. Davis* (1863), 2 H. & C. 197 ; 26 Digest 398, 1241 ; *Maguire v. Liverpool Corpn.*, [1905] 1 K. B. 767 ; 26 Digest 400, 1255.

misfeasance an action for damages will lie (*d*), as in the case of a heap of stones intended for the repair of a road being left unlighted upon the road at night (*e*). It is obvious that in the course of works of repair things may be done upon which a plea of misfeasance can be founded if injury results, *e.g.* the work may be negligently and inefficiently executed, the works may be inadequately fenced or lighted, materials may be left exposed in positions where they are an obstruction or danger. In all such circumstances an action for damages will lie against the highway authority if the Act complained of be the act of their servant.

Difficult questions occur when the authority responsible is both the highway authority and the authority for other purposes. For example, in *Winslowe v. Bushey U.D.C.* (*f*), the predecessors of an U.D.C. in 1893 constructed a sewer with manholes under a road. In 1906 the cover of one of the manholes projected above the granite setts surrounding it, and the setts projected above the surface of the roadway. The plaintiff was thrown from his motor cycle by the manhole and was injured. On a finding by the jury that the manhole was defective and was the cause of the accident, and that the defects were due to improper construction it was held that the plaintiff was entitled to recover. The Court of Appeal ordered a new trial on the ground that there was no evidence to support the finding of the jury. In this case the question of negligence in maintenance of the manhole had not been raised in the pleadings, and leave to amend was given by the Court of Appeal, it being, no doubt, the duty of a sanitary authority to take care that works for which they are responsible do not become a nuisance to the highway (*g*). [760]

The whole subject is difficult and the cases are not easy to reconcile. It is reasonably clear that a projection caused by the road becoming worn, so that a manhole, itself in good condition, projects, cannot give rise to a cause of action, the only breach of duty being the omission to repair the road (*h*). It is also clear that it is essential in such cases that it should be determined whether that which causes the accident is something for which the defendants are responsible as highway authority or something for which they are responsible in some other capacity (*i*).

In *Shoreditch Corporation v. Bull* (*k*), a local authority, who were both the highway and the sanitary authority, dug a trench along a road under their control for the purpose of laying a sewer. Afterwards they filled in the trench and opened the road for traffic. About a week after the road was thrown open, the plaintiff was driven along it in a cab. The cab-driver found that the part of the road which had been filled in was soft; he crossed to the off-side to avoid that danger, and ran into a heap of rubbish which had been deposited by a wrong-doer on that side of the road, with the result that the cab was overturned and the plaintiff suffered injuries. The defendants knew that the heap

(*d*) *Foreman v. Canterbury Corporation* (1871), L. R. 6 Q. B. 214; 26 Digest 408, 1294.

(*e*) See also Highway Act, 1835, s. 56; 9 Halsbury's Statutes 76, which imposes a penalty on the surveyor. See also s. 72 of the same Act.

(*f*) (1908), 72 J. P. 64, 259; 26 Digest 411, 1314.

(*g*) *Kent v. Worthing Local Board* (1882), 10 Q. B. D. 118; 26 Digest 410, 1312, but see *Thompson v. Brighton Corpn.*, *Oliver v. Horsham Local Board*, [1894] 1 Q. B. 332; 26 Digest 400, 1253.

(*h*) *Thompson v. Brighton Corpn.*, *Oliver v. Horsham Local Board*, *supra*.

(*i*) *Papworth v. Battersea Corpn.*, [1915] 1 K. B. 392; 26 Digest 398, 1239.

(*k*) (1904), 90 L. T. 210; 2 L. G. R. 756; 26 Digest 412, 1320.

of rubbish had been deposited upon the road. The jury found that at the time of the accident the part of the road that had been filled in was dangerous for traffic. It was held by the House of Lords, affirming the Court of Appeal, that the defendants were liable on the ground that they were guilty of misfeasance in throwing open the road when it was not fit for traffic, and that that misfeasance was the cause of the accident. The speeches delivered in the House of Lords are of very great interest in relation to the distinction between misfeasance and non-feasance, and suggest that in some of the earlier cases the principle that a highway authority are not liable for non-feasance has been a little too widely applied.

The employment of a contractor to do the work does not necessarily exonerate the highway authority (*l*). [761]

Transfer of Liability.—In the earlier part of this article there has been indicated a distinction between liability and duty to repair. Both liability and duty may be transferred under statutory provisions, and as the distinction is of importance the two subjects may well be considered separately.

Transfer of Liability to Repair.—Highways repairable by individuals *ratione tenuræ* or otherwise may be made repairable by the inhabitants at large. By sect. 62 of the Highway Act, 1835 (*m*), any body politic or corporate, or any person, liable to repair any highway *ratione tenuræ* or otherwise, or the surveyor of highways, may with the consent of the inhabitants in vestry (*n*) apply to a justice for the purpose of making the highway a parish highway. The surveyor or party liable to repair is then summoned to appear, and if the justices so decide an order is made declaring the highway a parish highway and fixing either a single payment or an annual contribution to be made by the party formerly liable to repair. The section provides for the appropriation of the payments made.

By sect. 35 of the Highway Act, 1862, and sect. 24 of the Highway Act, 1864 (*o*), which apply now to county roads repairable *ratione tenuræ* or otherwise by individuals, the party liable to repair may without any consent apply at petty sessions for an order that a highway so repairable shall thereafter be repairable by the inhabitants at large. A lump sum is fixed in discharge of the liability, which sum must be invested if it exceeds £50.

By sect. 148 of the P.H.A., 1875 (*p*), an urban authority may, by agreement with any person liable to repair any street or road, take on themselves the liability to repair on such terms as may be agreed. These powers are exercisable by county councils as respects county roads in rural districts (*q*). It does not appear that the street or road necessarily becomes a highway repairable by the inhabitants upon the execution of such an agreement, but it may no doubt be declared so repairable under sect. 152 (*r*).

(*l*) *Penny v. Wimbledon U.D.C.*, [1899] 2 Q. B. 72; 26 Digest 410, 1308; *Hill v. Tottenham U.D.C.* (1898), 79 L. T. 495; 26 Digest 404, 1268; *Thompson v. Bradford Corpn. and Tinsley*, [1915] 3 K. B. 13; 26 Digest 406, 1278.

(*m*) 9 Halsbury's Statutes 79.

(*n*) As to the necessity of this consent in modern times, see Pratt and Mackenzie's Law of Highways, 18th ed., p. 255, note (*b*).

(*o*) 9 Halsbury's Statutes 134, 149.

(*p*) 13 Halsbury's Statutes 635.

(*q*) L.G.A., 1929, Sched. I.; 10 Halsbury's Statutes 975.

(*r*) 13 Halsbury's Statutes 687.

Widening and enlarging of highways under the Highway Act, 1835, may be regarded as obsolete, but the provisions of that Act as to diversion are still in use and it is therefore necessary to mention that under sect. 93 (s) the powers of the Act as to widening and enlarging, diverting and turning are applicable to highways repairable by individuals, and that when such a highway is widened, enlarged, diverted or turned the justices must order it to be repairable by the inhabitants. The section provides for an annual or capital payment, as do the sections already mentioned. [762]

Transfer of Duty to Repair.—This subject is dealt with in detail in the title ROADS CLASSIFICATION, and it is sufficient to note here that a district road may become a county road, whether by reason of a change of classification or otherwise, that the function of repair of a county road may be retained by an urban authority, and that in some cases a county or district road may become a trunk road. The delegation of functions under L.G.A., 1929, does not affect the incidence of the duty and merely creates an agency.

Private streets may become repairable by the inhabitants under sects. 150, 152 of the P.H.A., 1875, or under sect. 19 of the Private Street Works Act, 1892 (t). [763]

Cesser of Liability.—The liability to repair a highway may be determined by the transfer of the liability under the provisions already discussed, by the stopping up or alteration of the way, or by its physical destruction, but is not determined by an order for diversion.

A highway may be stopped up by writ of *ad quod damnum*. This is a writ issued from the Crown office to the sheriff, directing him to inquire whether the proposal would be to the injury of the public. The writ is not now in use in cases to which the statutory procedure applies, but is no doubt still the appropriate procedure in the case of highways by water. Under the Highway Act, 1835, sects. 84—91 (u), a highway may be stopped up by order of two justices enrolled at quarter sessions. In such a case the liability to repair is extinguished and the use of the land reverts to its former owner free from the public right.

In the case of an alteration of the way by a lawful improvement, for example, when a narrow track is converted into a wide metalled road, the liability of an individual to repair the road is extinguished (a). In effect the law considers that that which the individual was bound to repair has disappeared (b).

The same principle applies when the highway is physically destroyed. For example, if a highway is destroyed by an encroachment of the sea, the liability to repair it ceases (c). And this is so when the road is along the top of a sea wall and the wall is destroyed by the sea, the inhabitants not being indictable for not rebuilding the sea wall (d),

(s) 9 Halsbury's Statutes 104.

(t) 13 Halsbury's Statutes 686—687; 9 Halsbury's Statutes 203.

(u) 9 Halsbury's Statutes 97—103.

(a) *R. v. Barker* (1890), 25 Q. B. D. 213; 26 Digest 369, 944; *R. v. Pickering Township* (1877), 41 J. P. 564; 26 Digest 371, 968.

(b) See *per* Lord COLERIDGE, C.J., in *R. v. Barker, loc. cit.*, at p. 220. An old authority, *R. v. West Riding of Yorkshire (Inhabitants)* (1787), 2 East, 353, n.; 26 Digest 577, 2683, which suggests the existence of a principle that those formerly liable remain liable *pro rata*, seems to have been overlooked and not to have been cited in any modern case.

(c) *R. v. Bamber* (1843), 5 Q. B. 279; 26 Digest 371, 964.

(d) *R. v. Paul (Inhabitants)* (1840), 2 Mood. & R. 307; 26 Digest 376, 1010, but see *Reigate Corpn. v. Surrey County Council*, [1928] Ch. 359; Digest (Supp.) and *R. v. Greenhow (Inhabitants)* (1876), 1 Q. B. D. 703; 26 Digest 371, 966.

though it appears that it is a question of fact whether in such cases there has been such destruction of the highway as to determine the liability to repair.

When a highway is diverted under the provisions of the Highway Act, 1835, the substituted highway is repairable by those who were liable to repair the old highway, even if the new highway be in a different parish (*e*). [764]

(*e*) Highway Act, 1835, s. 92 ; 9 Halsbury's Statutes 104.

REPAYMENT OF LOANS

See BILLS, BORROWING BY ; BONDS ; BORROWING ; MORTGAGES ; STOCK.

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INTRODUCTION

This title is not intended to be exhaustive on the subject of reports and returns. The number and the content of documents which properly could be so termed are such that any attempt adequately to describe them would be impossible within the compass of this work. The scope of the title has been strictly limited to reports and returns directly connected with the functions of local authorities in the usually accepted sense of the term. The largest number of reports and returns are rendered by local authorities to the various departments of State to whom they are accountable for the proper performance of their respective functions.

Reports and returns for the purposes of this title are divisible into two classes, financial and general or non-financial. Financial returns are again divisible into those which are required to be made by all local authorities indiscriminately, and those which are required by particular local authorities in respect of their particular functions. The general or non-financial returns will, for reasons of convenience, be divided into those required in respect of the major functions of local authorities and some of the residuum of reports and returns which will be merely listed alphabetically. [765]

General Obligation to make Reports and Returns.—By sect. 284 of the L.G.A., 1933 (*a*) :

Every local authority and every joint committee or joint board appointed jointly by two or more local authorities shall make to the Secretary of State (*b*) or to the Minister such reports and returns and give him such information in respect of their functions as he may require or as may be required by either House of Parliament (*c*). [766]

FINANCIAL RETURNS

General. *Return of Income and Expenditure.*—This return, generally termed the “epitome of accounts,” must be made to the Minister of Health in accordance with Part XI. of the L.G.A., 1933 (*d*), by the councils of counties, county boroughs, county districts and rural parishes and by the parish meeting of a rural parish not having a parish council (*e*), and also by the councils of metropolitan boroughs and the Common Council of the City of London (*f*).

The return gives in detail the totals of income and expenditure, both revenue and capital, for each of the services administered by the authority, including trading undertakings; and also gives details of loans and sinking fund transactions during the year and of general statistics. The actual form in which the return is made varies with the class of local authority, and detailed instructions for completing it are provided by the Minister in a memorandum which accompanies the form.

(*a*) 26 Halsbury's Statutes 456.

(*b*) Normally the Home Secretary. See s. 12 of the Interpretation Act, 1889; 18 Halsbury's Statutes 995.

(*c*) “Local authority” means the council of a county, county borough, county district or rural parish, and the “Minister” means the Minister of Health. See L.G.A., 1933, s. 305; 26 Halsbury's Statutes 465.

(*d*) 26 Halsbury's Statutes 437.

(*e*) L.G.A., 1933, s. 244 (1); 26 Halsbury's Statutes 437.

(*f*) *Ibid.*, s. 248.

A summary of these returns, known as the "Local Taxation Returns" must be made by the Minister each year and be laid before both Houses of Parliament. [767]

Statutory Financial Statement.—Where any accounts of a local authority are subject to district audit, the authority must prepare and submit to the district auditor a financial statement (*ff*) of those accounts in the form, and containing the particulars, prescribed by the Minister in the Audit Regulations, 1934 (*g*), made in pursuance of Part X. of the L.G.A., 1933 (*h*).

Where all the accounts of an authority are subject to district audit, the epitome of accounts (see above) may be used as the schedule which accompanies the statutory financial statement, and in that case, a copy of the epitome need not be sent to the Minister under Part XI. of the Act, unless the Minister requires that it shall be so sent (*i*).

The financial statement must be prepared in duplicate and one copy must be stamped in accordance with the scale fixed by the Treasury under sect. 221 (2) of the L.G.A., 1933 (*j*). The auditor, on completion of the audit, must certify in the prescribed form the amount of the expenditure allowed, and that the regulations with respect to the statement have been complied with, and that he has ascertained by audit the correctness of the statement. He must cancel the stamp and send the stamped copy to the Minister of Health (*k*). [768]

Return showing Provision for Repayment of Moneys Borrowed.—The clerk of a local authority must, within one month after being requested to do so by the Minister, transmit to the Minister a return showing the provision made by the local authority for the repayment of loans raised by the authority (*l*). The return must show such particulars, and be made up to such date, and be in such form as the Minister may prescribe; and must be certified by the treasurer or other person whose duty it is to keep the accounts of the authority; and must, if so required by the Minister, be verified by a statutory declaration made by that person (*m*). In practice this statement is called for quinquennially.

The Minister issues separate forms to be completed in respect of stock, loans repayable by sinking fund, loans repayable by instalments, securities issued under the Local Loans Act, 1875 (*n*), loans raised for advances to other local authorities, etc.

If it appears to the Minister that the local authority have failed in any way adequately to provide for the repayment of any loan, he may by order direct that a specified sum shall, in the manner and by the date set out in the order, be paid or applied as directed (*o*). The manner of enforcing such a direction, and the penalties for non-compliance with the section are prescribed by sub-sect. (4) and (5) of sect. 199 of L.G.A., 1933. [769]

Abstract of Accounts.—The Audit Regulations, 1934, made in pursuance of sect. 235 of the L.G.A., 1933, prescribe that in the case of accounts subject to district audit, the authority must, within one month of receipt of the auditor's report, give notice in one or more local newspapers that the audit has been completed and that they have made an abstract of the accounts which may be inspected at all reasonable hours.

(*ff*) Vide S. R. & O., 1938, No. 794.

(*g*) S.R. & O., 1934, No. 1188.

(*h*) L.G.A., 1933, s. 222; 26 Halsbury's Statutes 426.

(*i*) *Ibid.*, s. 244 (5).

(*j*) S. R. & O., 1938, No. 793.

(*k*) *Ibid.*, s. 222.

(*l*) *Ibid.*, s. 199 (1).

(*m*) *Ibid.*, s. 199 (2).

(*n*) 12 Halsbury's Statutes 248.

(*o*) L.G.A., 1933, s. 199 (3); 26 Halsbury's Statutes 415.

In the case of the accounts of boroughs which are not subject to district audit, the treasurer of the borough must, after the audit of the accounts for each financial year, print an abstract of the accounts for that year (p). [770]

Returns under Other Enactments.—Sect. 247 of the L.G.A., 1933 (g), provides that where, under any enactment, any return relative to any rate, tax, toll or due (other than such as are levied for the public revenue of the United Kingdom) is required to be sent to a Secretary of State or to any other Government department, a duplicate thereof shall in like manner be sent to the Minister of Health. [771]

Particular Returns Relating to Specific Functions of Local Authorities.—In every case where a grant in aid is payable in respect of a service administered by a local authority, and also where the central authority desires to maintain a degree of control over the administration of a service which is deemed to be semi-national in character, the local authority must furnish the appropriate Government department with returns giving particulars of the financial transactions involved. Power to demand such returns is usually taken in the appropriate statute, but in some cases the Government department concerned merely requests that a return shall be submitted. The amount and character of the information required about a particular service varies with the nature of the grant payable, if any, and with the degree of control which the central authority desires to exercise.

Certain financial returns are also required by various Government departments for purely statistical purposes. [772]

Examples of the returns required for some of the chief services are set out below :

Education.—Every education authority, whether for elementary or higher education, must make such reports and returns, and give such information to the Board of Education as the board may require (r). A great number of returns are required, among the most important being : (i.) Forecast of estimates. A rough estimate of the net expenditure on revenue account, submitted well before the beginning of the financial year. (ii.) Estimates. Detailed estimates of the income and expenditure in the ensuing year, analysed under many heads. (iii.) Financial statement. A summary, in great detail, of the accounts for the financial year. It is prepared as soon as possible after the close of the year. (iv.) Grant claim. Such particulars as are specified by the current grant regulations. In addition, returns must be made of superannuation contributions deducted from teachers' salaries under the Teachers Superannuation Acts, 1918–28 (s). [773]

Highways.—Every highway authority must make returns to the Minister of Transport of income and expenditure upon roads for which it is responsible. Among the most important of such returns are : (i.) Maintenance. (a) Forecasts of expenditure on maintenance and minor improvement works. Separate estimates must be submitted in respect of Roads, Classes I. and II., and Bridges, Classes I. and II. (b) Annual statement of expenditure on maintenance and minor improvement of classified roads. This is a return of actual expenditure. (ii.) Improve-

(p) L.G.A., 1933, s. 240 (c) ; 26 Halsbury's Statutes 436.

(g) 26 Halsbury's Statutes 439.

(r) Education Act, 1921, s. 152 ; 7 Halsbury's Statutes 206.

(s) 7 Halsbury's Statutes 303–341.

ments. (a) Annual estimate of expenditure on works in progress. (b) Annual estimate of expenditure on new works. (iii.) Speed limit. (a) Annual expenditure upon provision and erection of new speed limit signs. (b) Annual expenditure on maintenance and replacement of existing speed limit signs. (iv.) Traffic signals. Return of expenditure upon installation of traffic signals. In addition, authorities charged with the maintenance of trunk roads under the Trunk Roads Act, 1936 (*t*), must make the following returns: (a) Annual estimate of expenditure upon maintenance. (b) Annual estimate of special repairs, resurfacing and surface dressing. (c) Annual return of expenditure. [774]

Housing.—Grant claims in respect of houses erected under each of the post-war housing statutes, certified as to correctness and compliance with the statutory provisions, must be submitted to the Minister of Health. The unification of housing accounts by the Housing Act, 1936, has in some degree relaxed the control exercised by the Minister, and consequently less detailed information is now required. [775]

Police.—The following returns must be submitted to the Home Secretary by every authority maintaining a separate police force: (i.) Estimate of the net cost of the police for the year. (ii.) Statement of police expenditure for the year, and revised estimate of expenditure for the ensuing year. (iii.) Grant claim. (iv.) Police financial statement. (v.) Annual returns relating to police pensions. [776]

Public Assistance.—The Minister of Health has power to prescribe such forms and returns as he deems necessary (*u*). The chief financial returns required are: (i.) Return of income and expenditure in respect of poor relief. (ii.) Costing return—Institutional poor relief. [777]

Rating.—Every rating authority has power to demand from the owner, occupier or lessee of every hereditament in its area, a return containing such particulars as are reasonably necessary for the preparation of a new valuation list (*a*) or for the determination of a proposal to amend the current valuation list (*b*). Such returns must be sent to the assessment committee until the list has been approved or the proposal determined as the case may be.

Rating authorities in county districts and non-county boroughs must, before February 1 in each year, transmit to the county council an estimate, calculated in the prescribed manner, of the product of a rate of a penny in the pound in their area (*c*).

The Minister of Health *requests* all rating authorities to furnish him with an estimate of the product of a penny rate in their area. [778]

Trading Undertakings.—Financial returns have usually to be made to the appropriate Government department in respect of trading undertakings administered by local authorities under the provisions of the enactment giving power to operate such undertakings. Thus tramways undertakings must furnish an elaborate statistical and financial return to the Minister of Transport. Perhaps the most important of such returns are those which owners of "selected" electricity generating stations must send each month to the Central

(*t*) See Trunk Roads (Delegation of Powers) Order, 1937, Sched. IV. (S.R. & O., 1937, No. 34); 30 Halsbury's Statutes 325.

(*u*) See, generally, Poor Law Act, 1930, s. 18; 12 Halsbury's Statutes 979.

(*a*) R. & V.A., 1925, s. 40 (1); 14 Halsbury's Statutes 668.

(*b*) *Ibid.*, s. 40 (2).

(*c*) *Ibid.*, s. 9; 14 Halsbury's Statutes 627, as amended by L.G. (Financial Provisions) Act, 1937, s. 9; 30 Halsbury's Statutes 381.

Electricity Board. These show the amount and cost per unit of electricity generated at the station, and upon them are based the payments by the board to the authority. [779]

Costing Returns.—In addition to the general financial returns, which deal with total income and expenditure in respect of a service, there are several costing returns, dealing with net cost per unit of service, which must be made to the Minister of Health. The most important are :

Hospitals and Institutions.—These include poor law institutions, general hospitals, maternity homes and hospitals, tuberculosis institutions. These show, for each institution and class of institution, the average weekly cost per inmate or patient, of each head of expenditure. [780]

Sewage Disposal.—The Minister of Health *invites* authorities having sewage disposal works serving populations of not less than 50,000, to submit annually a return showing costs per unit. The Minister has also stated that he would be glad to receive copies of any such returns prepared in respect of works serving smaller populations. [781]

Street Cleansing and Refuse Disposal.—The Minister of Health *invites* returns from boroughs and urban districts, giving particulars of income and expenditure, cost per unit, method of disposal of refuse, etc. Returns are submitted by nearly all urban authorities whose population exceeds 30,000. [782]

RETURNS OTHER THAN FINANCIAL

Education.—An obligation to make reports and returns, as and when required, to the Board of Education is imposed on all education authorities by sect. 152 of the Education Act, 1921 (*d*). The section reads :

(1) Every local education authority shall make such report and returns, and give such information to the Board of Education, as the Board may require. (2) Every council having powers under this Act with respect to higher education, shall give to the Board of Education such information with respect to the exercise of those powers as the board may from time to time require.

Education authorities have to supply to the Board of Education returns and full particulars of attendances, numbers on registers, staff leavers and practical instruction. This obligation applies both in respect of elementary, senior, central and secondary schools and also in respect of technical schools (*e*). [783]

Among the host of particular returns to the Board of Education are included the following : Aids to students in respect of fees, maintenance allowances, books and travelling expenses (higher education)—an annual return ; blind, deaf or defective children—an annual return as to the boarding out of such ; children in receipt of maintenance allowances in elementary schools—an annual return ; loans to students (higher education)—an annual return ; meals to children in schools—an annual return ; milk supplied to children in schools—similar returns

(*d*) 7 Halsbury's Statutes 206.

(*e*) See the annual returns relating to numbers of students and student hours (a) School of Art (Forms 251 d.T. & 255 T.) ; (b) Commercial and Engineering (Forms 251 T. (a-e)) required under the Regulations for Further Education, 1934 ; S.R. & O., 1934, No. 303.

in respect of elementary and higher schools ; play centres—a return showing the number of sessions and number of pupils in attendance thereat.

Returns have also to be made in respect of teachers, including separate returns, *e.g.* as to supplementary teachers and the proposed establishment of teachers.

The board require particulars relating to the salary, training, qualifications, service and superannuation contributions in respect of each teacher, both those on the permanent staff and occasional teachers (*f*), with notifications of changes in status or termination of employment of teachers. Again, following the Burnham Report, separate certification of the payment of Burnham rates and returns as to amounts paid in salaries have to be sent to the board in respect of both elementary and higher education. Audited returns of superannuation contributions have to be made at prescribed intervals, and there are also supplementary returns showing amounts collected and refunded subsequent to the making of the former. [784]

Highways.—Highway authorities are obliged to make a general annual return to the M. of T. of the mileage of highways under their control. The type of return naturally differs as between the various types of authorities (*g*).

Returns in regard to maintenance, improvements and the like are chiefly returns as to annual expenditure and are of a financial character (see *supra*). Specific returns are required on particular matters. Thus, in regard to trunk roads a return is required as to land transferred to the Minister therewith, and a return giving the mileage of such roads restricted and unrestricted under sect. 1 of the Road Traffic Act, 1934 (*h*). Again there are returns giving statistics of traffic generally, and at road junctions, the latter for the purpose of traffic signals. [785]

Housing.—Generally speaking, for the purposes of the Housing Act, 1936, outside the administrative County of London the responsible local authority is the council of the borough, urban district or rural district (*i*). [786]

Houses Unfit for Human Habitation.—A local authority is obliged to cause inspection of its district to be made from time to time with a view to ascertaining whether any house therein is unfit for human habitation and to comply with such regulations and keep such records as the Minister may prescribe (*k*).

Overcrowded Houses.—Sect. 57 of the Housing Act, 1936 (*l*), imposes a duty on every housing authority to cause an inspection of their district to be made with a view to ascertaining what dwelling-houses therein are overcrowded and to prepare and submit to the Minister a report showing the result of the inspection and the number of new houses required in order to abate overcrowding in the district. The first stage is the inspection, the report is the second stage, and submission of proposals is the third stage. Sect. 67 of the Housing Act, 1936 (*m*),

(*f*) Form 1 C.R. and 1 Z.C.R.

(*g*) See title HIGHWAY AUTHORITIES, Vol. VI., p. 343.

(*h*) 27 Halsbury's Statutes 535.

(*i*) Housing Act, 1936, s. 1 (1) and 188 (2) ; 29 Halsbury's Statutes 565, 682.

(*k*) *Ibid.*, s. 5 ; *ibid.*, 568 ; Housing Consolidated Regulations, 1925, S.R. & O., No. 866, as amended by the Housing Consolidated (Amendment) Regulations, 1932, S.R. & O., No. 648.

(*l*) 29 Halsbury's Statutes 609.

(*m*) *Ibid.*, 615.

provides that regulations prescribing duties of medical officers of health of boroughs and urban and rural districts shall include provisions imposing duties on those officers to furnish annually to the Minister particulars in respect of conditions in relation to overcrowding, and particulars of any cases in which dwelling-houses in respect of which steps have already been taken have again become overcrowded. [787]

Housing Portion in Annual Report of M.O.H.—The Annual Report of the M.O.H. must contain certain information concerning local housing conditions (*n*). This is dealt with later at p. 351. [788]

Rural Housing.—Housing in rural districts is made the concern of both county and rural district councils by sect. 88 of the Housing Act, 1936 (*o*). It is the duty of the county council to have constant regard to the housing conditions of the working classes, the extent of overcrowding or other unsatisfactory housing conditions, and the sufficiency of steps taken by the district council to remedy those conditions and to provide further accommodation. As a complement to this duty, the R.D.C. are obliged at such intervals, not being in any case less than one year, as the county council may direct, to furnish to the county council such information with regard to the above matters as the county council may reasonably require to enable them to carry out their duties under the section. [789]

Summary of Returns to the Minister of Health.—In practice, the returns submitted to the Minister of Health now include the following :

(i.) A monthly progress report showing the number of new houses provided by local authorities and housing associations, and the average price and size of houses in contracts let by housing local authorities during the month.

(ii.) A half-yearly return showing the number of houses in different categories of rateable value provided by private enterprise (separate returns being obtained from local authorities inside and outside the metropolitan police district). The return distinguishes houses up to £13 rateable value (£20 in the metropolitan police district) and houses between £13 and £26 rateable value (£20 and £35 in the metropolitan police district) and shows the number occupied by persons other than the owner.

(iii.) A quarterly progress report as to the action taken by local authorities in regard to clearance areas and insanitary houses. Related to this return is a statement which authorities are asked to make at quarterly or half-yearly intervals showing the progress made under their slum clearance programmes.

(iv.) A quarterly progress report of the action taken under the Housing (Rural Workers) Acts, 1926 and 1931.

(v.) A half-yearly report showing the advances or guarantees made or given by local authorities for the purchase or erection of houses under the Small Dwellings Acquisition Acts and the Housing Acts. [790]

Lunacy.—Visiting committees are obliged to make annual reports to the local authority to which their asylum belongs, regarding the state and condition of the asylum, accommodation, management, the conduct of officers and servants, and the care of patients therein (*p*). Within twenty-one days of its presentation to the local authority a copy of the report must be sent by the clerk to the Board of Control (*q*). Visiting members must, once at least in each quarter, enter in the institution book observations respecting diet, accommodation and

(*n*) See Housing Consolidated Regulations, 1925, art. 31, as amended by the Housing Consolidated (Amendment) Regulations, 1932.

(*o*) 29 Halsbury's Statutes 630.

(*p*) Lunacy Act, 1890, s. 190 ; 11 Halsbury's Statutes 83, and see *ibid.*, s. 173.

(*q*) Commissioners Rules, 1925, r. 37.

treatment of persons of unsound mind in institutions. The book must be laid by the master before the commissioners at their next visit (*r*).

Quarterly returns and a further annual return (as soon as possible after January 1 in each year) (*s*) as to rate-aided persons of unsound mind must be made to the Board of Control by clerks to councils. By the 7th of January, April, July and October in each year, district and institutional medical officers must transmit to the clerk to the public assistance authority a list of rate-aided persons of unsound mind (not in institutions for such persons) visited during the quarter. Within two clear days after receipt, copies of lists must be sent to the Board of Control and to clerks to visitors of mental hospitals (*t*). A quarterly return of mechanical restraint used in public assistance institutions has to be sent to the Board of Control by the clerk of the public assistance authority (*u*).

Justices of quarter sessions boroughs and of counties, in the month of October have to appoint, at special sessions, visitors of licensed houses (these are licensed by quarter sessions also). The names, addresses, etc., of such visitors are forthwith to be notified to the clerk of the peace, who is to publish the same within fourteen days and notify the Board of Control within three days (*a*). At the same time they appoint some of their number to exercise powers conferred upon the "judicial authority" for the purposes of the Lunacy Acts, 1890 and 1891, and of the Mental Deficiency Act, 1913.

The clerk of the peace has to make up a yearly account of licence fees and other payments to him (*b*).

An annual return of criminal lunatics has to be sent to the Secretary of State. [791]

Mental Deficiency.—The administration by local authorities of their powers and duties under the Mental Deficiency Acts is supervised by the Board of Control (*c*). The board are obliged to make annual reports (to be presented to Parliament) and such special reports as the Minister of Health may from time to time require (*d*). Local authorities in turn are required to make annual reports to the board and such other reports as the board may require (*e*). Superintendents of institutions or certified houses have to send quarterly returns to the visitors relating to patients who are about to attain the age of twenty-one years, and to those whose cases will otherwise require consideration in respect of the renewal of their detention orders. The former return must also be sent to the board (*f*). Committees of management of certified institutions administered by local authorities must lay annual reports before their authority for transmission to the board (*g*).

Local authorities outside London exercise their functions in this particular through the medium of the mental deficiency committee

(*r*) Lunacy Act, 1890, s. 54; 11 Halsbury's Statutes 41.

(*s*) Mental Treatment Rules, 1930, rr. 126, 127; 23 Halsbury's Statutes 206.

(*t*) Commissioners Rules, January 7, 1925, r. 38.

(*u*) Lunacy Act, 1890, s. 40; 11 Halsbury's Statutes 36.

(*a*) *Ibid.*, ss. 177, 208; *ibid.*, 79, 91.

(*b*) *Ibid.*, s. 224; *ibid.*, 94.

(*c*) Mental Deficiency Act, 1913, s. 25 (1) (*b*); *ibid.*, 175.

(*d*) *Ibid.*, s. 25 (1) (*g*); *ibid.*, 176.

(*e*) *Ibid.*, s. 30 (*h*); *ibid.*, 179.

(*f*) Mental Deficiency Regulations, 1935; S.R. & O., No. 524, reg. 45.

(*g*) *Ibid.*, reg. 54.

which they are by statute obliged to create (*h*). The section further obliges the local authority to refer all matters relating to the exercise by them of their powers under the Act (except the power of raising a rate or borrowing money) to this committee. The local authority, before exercising any of their powers, shall, unless in their opinion the matter is urgent, receive and consider the report of this committee with respect to the matter in question (*i*). [792]

Police. General Police Returns.—A general police return is required to be made annually by sect. 14 of the County and Borough Police Act, 1856 (*j*), as amended by the Police Returns Act, 1892 (*k*). The section imposes the duty on the standing joint committee of a county so far as county police are concerned (*l*), and on the watch committee so far as borough police are concerned, of transmitting an annual statement to the Home Secretary. The report is to be in such form as the Secretary of State may from time to time direct, and to include the number of offences reported to the police within the county or borough, the number of persons apprehended, the nature of the charges, results of the proceedings taken thereupon and all other particulars relating to the state of crime within the county or borough. A classified abstract of all such reports and returns must be prepared annually and laid before Parliament.

Watch committees must send to the Home Secretary on the 1st January, April, July and October in each year a copy of rules made from time to time for the guidance and regulation of borough constables (*m*). [793]

Licensing Returns.—Allied to the above are licensing returns which are also required to be made annually to the Home Secretary. Sect. 46 (*n*) of the Licensing (Consolidation) Act, 1910, imposes the obligation of making certain annual licensing returns to the Secretary of State on compensation authorities (the whole body of justices in a county borough, and elsewhere the quarter sessions for the county) (*o*), and on confirming authorities (quarter sessions in a county petty sessional division, the joint committee in small boroughs (*p*) and the whole body of justices elsewhere (*q*)). The compensation authority's annual return and financial statement is to be sent to the Home Secretary not later than the last day of February in every year. The confirming authority's annual return is to be sent to the Home Secretary on or before July 1 in every year.

The renewal authority must send the list and reports to the compensation authority before April 30 (*r*).

Other reports and returns are made in practice by police authorities for which apparently no specific statutory authority exists. [794]

Chief Constable's Report.—Chief constables present reports to their standing joint committees in counties, and watch committees in

(*h*) Mental Deficiency Act, 1913, s. 28 (1); 11 Halsbury's Statutes 176.

(*i*) *Ibid.*, s. 28 (2); *ibid.*, 177.

(*j*) 12 Halsbury's Statutes 815.

(*k*) 12 Halsbury's Statutes 855.

(*l*) See L.G.A., 1888, s. 9; 10 Halsbury's Statutes 692.

(*m*) Municipal Corpn. Act, 1882, s. 192; *ibid.*, 637.

(*n*) 9 Halsbury's Statutes 1014.

(*o*) Licensing (Consolidation) Act, 1910, s. 2; 9 Halsbury's Statutes 986.

(*p*) *Ibid.*, s. 4; *ibid.*, 988.

(*q*) *Ibid.*, s. 2; *ibid.*, 987.

(*r*) Licensing Rules, 1910, r. 7.

boroughs; in the former case, quarterly, and in the latter, annually. [795]

Licensing Reports.—Similarly, annual reports are presented to the general annual licensing meeting for every licensing district, by chief constables in boroughs with their own separate police force, and elsewhere by superintendents of the petty sessional division. [796]

Return of Constabulary.—All police authorities have to make an annual return of constabulary to H.M. Inspector of Constabulary. [797]

Return of Accidents.—A return of unfortunately increasing importance is the return of fatal and non-fatal accidents on roads which chief constables have been requested to, and do in fact, make monthly and annually to the Minister of Transport. [798]

Other Returns by Police.—In addition there are returns which police authorities make in practice respecting others of their functions, e.g. an annual return of aliens and coloured seamen to the H.O.; and returns under the Diseases of Animals Acts when, as usually happens, chief constables are also appointed inspectors thereunder. [799]

Clerks of the Peace.—This office is most frequently held by the clerk of the county or county borough with its own court of quarter sessions, and hence certain of his returns are relevant for present purposes. The clerk of the peace has to place returns as to the constabulary force from the chief constable before standing joint or watch committees (s) and to make returns as to fines and forfeitures to the Treasury (t) within twenty days from the opening of sessions. He has also to make an annual return to the Secretary of State of appeals against convictions, sentences or orders (including bastardy orders) of courts of summary jurisdiction, and of rating appeals.

An annual return to the clerk of the Crown of newly appointed justices of the peace and a list of deaths of justices is also made by clerks of the peace (u).

The clerk of the peace is also the recipient of returns relevant to the affairs of his district. Thus, the declaration of the High Sheriff, Under Sheriff, and a copy of the latter's appointment in counties is deposited with him (a); and he receives the return of members of Freemasons' lodges pursuant to sect. 6 of the Unlawful Societies Act, 1799 (b).

Clerks of justices have to render quarterly, or at any less interval as may be directed by the local authority, accounts of fines, fees or other sums received by them (c), also a quarterly certified statement of fines payable to H.M. or to the Exchequer (d). [800]

Public Assistance.—The Minister of Health is charged with the direction and control of all matters relating to the administration of relief to the poor throughout England and Wales, and generally all powers of local authorities, i.e. county councils and county borough councils, in that regard are to be exercised under the control and subject to the rules, orders and regulations of the Minister (e).

(s) For counties, see County Police Act, 1840, s. 31; 12 Halsbury's Statutes 795; L.G.A., 1888, s. 9; 10 Halsbury's Statutes 692.

(t) Levy of Fines Act, 1823, s. 5; 11 Halsbury's Statutes 242.

(u) See regulations made under the Crown Office Act, 1877, reg. 2.

(a) The Sheriffs Act, 1887; 17 Halsbury's Statutes 1107.

(b) 4 Halsbury's Statutes 405.

(c) Justices Clerks Act, 1877, s. 9; 11 Halsbury's Statutes 323; Summary Jurisdiction Rules, 1915, r. 10.

(d) Summary Jurisdiction Rules, 1915, r. 15.

(e) Poor Law Act, 1930, s. 1; 12 Halsbury's Statutes 968.

In Wales, however, the Minister now exercises this particular function through the instrumentality of the Welsh Board of Health. [801]

Local Records and Returns. General Relief.—Records are dealt with in Arts. 22, 23 and 24 of the Public Assistance Order, 1930 (*f*). The clerk or public assistance officer has to keep a book called the relief order book in which is entered the name of every person applying for relief, and at each meeting of a relief committee a minute of the order made on such application is entered (*g*). [802]

Medical Relief.—A permanent medical relief list of all aged, infirm, permanently sick or permanently disabled persons residing in each medical relief district who are in receipt of relief has to be prepared at the beginning of each half-year by the same officer. This has to be furnished to the district medical officer (*h*). The prescribed forms of books, records or other documents directed to be kept must be adhered to (*i*). [803]

Various officers connected with the poor law are obliged by the Order of 1930 to keep certain records :

District Medical Officers.—The district medical officer has to keep the district medical officer's relief book containing particulars of his attendances on poor persons under his care (*k*). [804]

Relieving Officers.—Relieving officers, in addition to preparing case papers, have to keep outdoor relief lists in the prescribed form together with a half-yearly or yearly abstract thereof of the sums of relief in money, and the value of the relief in kind which have been given by them to or on account of every poor person relieved by them in each week, the cases of the non-settled poor being recorded separately from those of the settled poor (*l*). [805]

Masters of Institutions.—The master of an institution has to record births and deaths in the prescribed register (*m*) ; keep an admission and discharge book (*n*) ; keep the indoor relief list (together with a half-yearly or yearly abstract thereof) of the persons admitted to the institution and of the number of days on which they were resident therein in each week (*o*) ; keep a register of inmates in the prescribed form (*p*) ; and keep inventories and records of provisions (*q*). At each meeting of the House committee he has (*inter alia*) to submit a report of the state of the institution and a report of any inquest (*r*) ; and he has to submit for transmission to the management committee at the first meeting of the house committee after January 1 and July 1 in each year, a full report with respect to the institution, including any casual ward, the observance of the regulations relating thereto, the officers, assistant officers, servants and inmates, and generally on matters upon which he may be required, or may wish, to report. [806]

Medical Officers of Institutions.—These officers must report to the Minister within twenty-four hours any sudden or accidental death among inmates or casuall (*s*) ; keep for reference to the house committee reports on matters affecting the health of the inmates and the

(*f*) 12 Halsbury's Statutes 1057.

(*g*) Public Assistance Order, 1930, art. 22 ; 12 Halsbury's Statutes 1057 .

(*h*) *Ibid.*, art. 23 (1).

(*i*) *Ibid.*, art. 24.

(*k*) *Ibid.*, art. 166 (3) ; 12 Halsbury's Statutes 1079.

(*l*) *Ibid.*, art. 167 (13) ; *ibid.*, 1080.

(*n*) *Ibid.*, art. 168 (16) ; *ibid.*, 1081.

(*p*) *Ibid.*, art. 168 (18).

(*r*) *Ibid.*, art. 168 (21) (a) to (f) ; *ibid.*, 1082.

(*m*) *Ibid.*, art. 168 (11).

(*o*) *Ibid.*, art. 168 (17).

(*q*) *Ibid.*, art. 168 (19 and 20).

(*s*) *Ibid.*, art. 170 (6) ; *ibid.*, 1083.

welfare of the institution in general. Finally, at the first meeting of the management committee after January 1 and July 1 in each year, they must submit a half-yearly report, for transmission to the management committee, of the condition of the institution, including casual ward, sick wards, mental wards and nurseries (*t*). [807]

Matrons and Stewards of Institutions.—Matrons and stewards of institutions have to report generally at every meeting of the house committee (*u*). [808]

Returns to the Minister.—(i.) A weekly return of the number of persons in receipt of relief (excluding rate-aided patients in mental hospitals) chargeable to the poor law authority rendering the return. It distinguishes persons in receipt of institutional and out-relief and casuals.

(ii.) A monthly return of the average numbers of persons receiving out-relief administered by the poor law authority rendering the return, and the cost of such relief. The persons are divided into four classes and separate particulars are given for persons relieved on account of unemployment and those relieved on account of other causes.

(iii.) A quarterly return of test workers (*a*).

(iv.) A quarterly return of rate-aided persons of unsound mind (see "Lunacy," *supra*).

(v.) A return, obtained once a year, namely, on the night of January 1, classifying these persons according to physical and mental condition and according to the character of the relief afforded to them.

(vi.) A yearly detailed return of the income and expenditure of each poor law authority (see "Financial Returns," *supra*).

In Wales and Monmouthshire certain of these returns are now sent to the Welsh Board of Health. [809]

Public Health. *Medical Officers of Health.*—The relevant authority is now the Sanitary Officers (Outside London) Regulations, 1935 (*b*), in respect of the duties (including the preparation of reports and returns) both of medical officers of health and of sanitary inspectors.

The regulations draw a distinction between medical officers of health of counties—these are dealt with in Part II. of the Regulations—and medical officers of health of districts (district for this purpose meaning a borough, urban district, rural district or port health district, and also a union of districts for the appointment of a M.O.H.). [810]

County M.O.H.—As soon as practicable after December 31 in each year, the M.O.H. has to make an annual report to the county council for that year on the sanitary circumstances, the sanitary administration and the vital statistics of the county (*c*). This report must contain, in addition to matters upon which the M.O.H. considers it desirable to report, such information as may from time to time be required by the M. of H. The Minister is entitled to require as many copies of the report and at such times as he may choose (*d*). The M.O.H. is obliged

(*t*) Public Assistance Order, 1930, art. 170 (14); 12 Halsbury's Statutes 1084.

(*u*) *Ibid.*, art. 171, 176 and 177; *ibid.*, 1084, 1086.

(*a*) Relief Regulation Order, 1930, art. 6; *ibid.*, 1091.

(*b*) S.R. & O., 1935, No. 1110.

(*c*) *Ibid.*, reg. 6 (3).

(*d*) The report of the M.O.H. of all authorities is in practice also sent to the members and other officers of the authority, editors of newspapers and journals and to fellow medical officers of health in other districts. It is also deposited in the local public library.

to furnish the Minister with one copy of any special report which he may make to the county council (e). [811]

Borough, Urban or Rural District M.O.H.—The M.O.H. must forward to the M. of H. by post every week, in time to ensure its delivery on Monday, or the morning of Tuesday at the latest, a return in such form as the Minister may from time to time require of the number of cases of infectious disease notified to him during the week which ended on the preceding Saturday night (f). In the case of a county district, a duplicate of this report must be forwarded at the same time to the M.O.H. of the county in which the district is situated.

An annual report has to be made to the Minister relating to overcrowding (g). See para. headed "Housing," *post*, p. 351. [812]

As soon as practicable after December 31 in each year the M.O.H. must make an annual report to the local authority for the year ending on that date of the sanitary circumstances, the sanitary administration and the vital statistics of the district, containing, in addition to any other matters upon which he may consider it desirable to report, such information as may from time to time be required by the Minister, and furnish the Minister with as many copies of such report as the Minister may from time to time require (h).

Any special report which the M.O.H. may make to his authority has to be forwarded to the Minister, and also in a county district to the county council (i).

Finally, the M.O.H. must forthwith report to the Minister any case of plague, cholera or smallpox or any serious outbreak of disease in the district which may be notified to him or which may otherwise come or be brought to his knowledge and, in the case of a county district, also notify the M.O.H. of the county (k).

The Minister of Health, in turn, sends to the local M.O.H. a copy of his Principal Medical Officer's Annual Report.

If the M.O.H. of a county district fails to give to the county M.O.H. and/or the M. of H., information which the latter reasonably requires (l), there is now no penalty on the district M.O.H., but the failure is a ground for forfeiture of the repayment of a moiety of the district M.O.H.'s salary by the county council. [813]

Port Health Authorities.—An annual report relating to the inspection and tonnage of shipping entering the port, the character of the trade of the port, the measures taken against rodents and the hygiene of crew spaces and food inspection, has to be prepared by the M.O.H. and sent to the M. of H. It is also sent to other Government departments, other port health authorities and harbour and pilotage commissioners. A return relating to the medical inspection of aliens is sent to the M. of H. Monthly, quarterly and annual reports are prepared by senior port health inspectors for the local health committee. Weekly records of infectious diseases at ports at home and abroad and lists of ports qualified to issue deratisation and exemption certificates are received from the M. of H. The Office International d'Hygiène Publique

(e) S.R. & O., 1935, No. 1110, reg. 6 (4).

(f) *Ibid.*, reg. 17.

(g) *Ibid.*, reg. 17 (4) and *cf.* Housing Act, 1936, s. 67; 29 Halsbury's Statutes 615.

(h) *Ibid.*, reg. 17 (5), and see note (d), *ante*, p. 349.

(i) *Ibid.*, reg. 17 (6).

(k) *Ibid.*, reg. 17 (7).

(l) L.G.A., 1933, s. 113; 26 Halsbury's Statutes 367.

sends annual returns of destruction of rats in ports and on board ships. [814]

Sanitary Inspectors.—The regulations deal only with the duties of sanitary inspectors of boroughs, urban districts, rural districts, port health districts or unions of districts. The duties of sanitary inspectors are set out in regulation 27. These do not provide for the preparation of any official reports or returns by sanitary inspectors as such, direct to their authority or any outside authority, but included among their duties are the preparation of reports or quasi-reports to the M.O.H. Thus a sanitary inspector is obliged to report to the local authority any noxious or offensive businesses, trades or manufactories established within his district and any breach or non-observance of any bye-laws or regulations made in respect thereof (*m*). Again, in the case of any damage to any works of water supply or other works belonging to the local authority, and also in cases of wilful or negligent waste of water or fouling by gas, filth or otherwise of water used or intended to be used for domestic purposes, the sanitary inspector is obliged to report to his local authority (*n*). He has also to enter daily in a book or separate sheets or cards provided by the local authority, particulars of his inspections and of the action taken by him in the execution of his duty (*o*). Finally, at all reasonable times when applied to by the M.O.H., he has to produce to him his books or any of them and render to him such information as he may be able to furnish with respect to any matter to which the duties of sanitary inspectors relate (*p*).

Regulation 27 (18) provides for the equivalent of the annual report on the part of a sanitary inspector. This provides that as soon as practicable after December 31 in each year he shall furnish the M.O.H. with a tabular statement containing the following particulars: (a) The number and nature of inspections made by him during the year. (b) The number of notices served during the year, distinguishing statutory from other notices. (c) The result of the service of such notices. [815]

Blind Persons.—A monthly return of admission to the register of blind persons is sent to the Prevention of Blindness Committee. Records of persons removed from the register are sent to the local postmaster (*q*). A return is sent to the M. of H. every three years giving full particulars of (*inter alia*) the age, periods of training and occupations of blind persons and the number of children, mental defectives and unemployable and assisted persons on the register. [816]

Hospitals.—Returns of work done at the general and other hospitals of local authorities and costing returns of the former are sent annually to the M. of H. [817]

Housing.—The M. of H. may require a local housing authority to make a report to him giving particulars of the population and other matters which the Minister may require if, in his view, it is expedient, by reason of density of population or otherwise, to inquire into the

(*m*) S.R. & O., 1935, No. 1110, reg. 27 (3).

(*n*) *Ibid.*, reg. 27 (4).

(*o*) *Ibid.*, reg. 27 (16).

(*p*) *Ibid.*, reg. 27 (17).

(*q*) Wireless Telegraphy (Blind Persons Facilities) Act, 1926; 19 Halsbury's Statutes 316.

circumstances of the area with a view to determining whether any powers under the Housing Acts should be put into force (*r*). This report will usually be the responsibility of the M.O.H.

Records of inspections of houses are required to be prepared by the M.O.H. and kept by the local authority (*s*). [818]

The annual report of the M.O.H. of a borough or district council has to state in tabular form: (1) The number of houses which on inspection were considered to be unfit for human habitation; (2) the number of houses the defects in which were remedied in consequence of informal action taken by the local authority or their officers; (3) the number of representations made to the local authority with a view to the serving of notices requiring the execution of works, or to the making of demolition or closing orders; (4) the number of notices served requiring the execution of works; (5) the number of houses which were rendered fit after service of formal notices; (6) the number of demolition or closing orders made; (7) the number of houses in respect of which an undertaking was accepted under sect. 19 (2) of the Housing Act, 1930 (*t*); and (8) the number of houses demolished (*u*).

A quarterly housing progress report relating to unhealthy areas and insanitary houses is sent by the local authority to the M. of H. and similarly a half-yearly report relating to clearance areas and individual unfit houses. [819]

Infectious Diseases.—Returns of notifications received by the M.O.H. are sent weekly direct to the Registrar-General, who acts as agent for the M. of H. in so receiving them. The Registrar-General publishes the weekly returns of these notifications and includes the corresponding quarterly and annual returns in his own quarterly and annual publications. The Minister sends the weekly and quarterly returns for the whole country to the local M.O.H. [820]

Maternity and Child Welfare.—Local authorities forward to the Minister particulars of the arrangements made for maternity and child welfare and of work done at maternity homes, together with costing returns of the latter. As part of his returns in regard to this function, the M.O.H. forwards to the Minister an annual return of the notifications which he has received under the Notification of Births Act, 1907.

Maternity and child welfare committees have to be established and, except in cases of urgency, their report must be considered by the authority before dealing with matters properly within their sphere (*a*). [821]

Tuberculosis.—The M. of H. has to be supplied with a summary of notifications, and returns (1) of work done at dispensaries and at residential institutions, (2) of patients receiving residential treatment, (3) summarising results of treatment over a period of years and also costing returns of sanatoria (see "Financial Returns," *ante*.).

In Wales and Monmouthshire this function is performed for local authorities by the King Edward VII. Welsh National Memorial

(*r*) Housing Act, 1936, s. 179; 29 Halsbury's Statutes 677.

(*s*) Housing Consolidated Regulations, 1925, reg. 29; S.R. & O., 1925, No. 866.

(*t*) 23 Halsbury's Statutes 412.

(*u*) Housing Consolidated Regulations, 1925, reg. 31, as amended by the Housing Consolidated (Amendment) Regulations, 1932, reg. 4.

(*a*) Maternity and Child Welfare Act, 1918, s. 2; 11 Halsbury's Statutes 743.

Association. (See title **WELSH NATIONAL MEMORIAL**.) Generally, however, in Wales, similar returns have to be made (b). [822]

Vaccination Returns.—The vaccination officer, who is a statutory officer, is required by the middle of February in each year to make vaccination returns to the Minister of Health for the preceding year. In practice, however, the Registrar-General receives them as agent for the Minister, to whom the results and statistics derived therefrom are sent for ultimate publication. Similarly, a return showing the number of persons successfully vaccinated and re-vaccinated at the cost of the rates by medical officers of institutions and public vaccinators during the year ended September 30 is sent to the Registrar-General. At the end of each quarter, vaccination officers have to make out an account and submit it to the council together with their books and certificates (c). Registrars of births and deaths have to transmit to the vaccination officer by the third of each month a return of births and deaths of infants under twelve months of age for the previous month, and at the end of the quarter they send to the council of the county or county borough for payment accounts of fees under the Vaccination Acts (d). [823]

Venereal Diseases.—Various annual returns as to work done and an annual report relating to venereal disease laboratories have to be forwarded to the M. of H. (e). The local treatment centres prepare annual returns of all persons treated and forward the same to the M.O.H. and M. of H. [824]

Registration of Electors.—The statutory electoral registration officers, *i.e.*, clerks of county and county borough councils, render an annual summary of the register of electors to the Registrar-General. They do so by virtue of no statutory provision, but in pursuance of an administrative arrangement or instruction made by the Secretary of State.

Registration officers receive quarterly returns of deaths from registrars of births and deaths (f). See title **REGISTRATION OF BIRTHS, DEATHS AND MARRIAGES**, *infra*. [825]

Trading Undertakings. Electricity.—A monthly return (Form O.R. (3)), an annual return (Form O.R. (A)) and a yearly estimate (Form O.R. (E)) relating to particulars of cost of production and

(b) The annual report, annual estimates and statement of accounts of the Memorial Association are submitted to the Minister and to the contributing county and county borough councils in accordance with the scheme made by the Minister dated March 25, 1937 (Clause 2); while the return showing the provision made for repayment of loans is submitted to the Minister in accordance with the High Court Scheme dated November 15, 1930. The annual return of work done at dispensaries and as to institutional treatment is prepared by the Memorial Association and submitted to the Welsh Board of Health. Particulars of Tuberculosis notifications and deaths are sent weekly by the contributing authorities to the Memorial Association. The Association send a detailed annual return of work done at clinics and institutions, and the results of observation and treatment of cases, to the local M.O.H.

(c) Vaccination Order, 1898, art. 23.

(d) Vaccination Act, 1871, s. 8; 13 Halsbury's Statutes 620; and regulations of Registrar-General.

(e) Venereal Diseases Regulations, 1916.

(f) Parliamentary and Municipal Registration Act, 1878, s. 11; 7 Halsbury's Statutes 462; Representation of the People Act, 1918, Sched. VI. (4); 7 Halsbury's Statutes 588.

giving technical details of the generating station must be sent to the Central Electricity Board.

An annual statistical and financial return (Form El.C. 32) and an annual supplementary statistical return (Form El.C. 32B) and a return (Form El.C.37) for the calculation of the expenses of the Electricity Commissioners have to be sent to the Electricity Commission. Monthly returns (Form El.C. 3) and annual returns (Form El.C. 34) of fuel consumption and units generated have also to be sent to them. A further annual return (Form El.C. 57) must be made at the end of March in each year showing the progress made by authorised undertakers in carrying out the compulsory work under their special orders or Acts and in providing distributing mains, more particularly in rural areas of supply.

A quinquennial census of production is supplied to the Board of Trade.

The British Electrical Development Association is supplied quarterly with a return of domestic appliances and consumers, and half-yearly with statistics relating to domestic apparatus and electric street lighting. [826]

Gas.—Accounts of gas companies (including local authority undertakers) have to be sent annually to the clerk of the peace.

All gas undertakings, including local authorities, must furnish to the Board of Trade, at such times and in such form and manner as the board may direct, an annual account and such statistics and returns as the board may require (*g*). The local authorities, *i.e.* councils of counties, county boroughs and urban districts, within the limits of supply of the undertakers, must be supplied with a copy of the annual account within seven days after its dispatch to the Board of Trade. Copies of the account must be placed on sale at the principal office of the undertakers at a price not exceeding one shilling per copy (*g*). [827]

Public Service Vehicles.—A quarterly statistical return (Form F.S. 1681) and an annual financial return (Form F.S. 80) have to be sent to the Minister of Transport. [828]

Tramways.—An annual statistical return (Form F.S. 44) must be supplied to the Minister of Transport. A census of production is furnished every five years to the Board of Trade. [829]

Water.—Generally speaking, no returns are required by any Government department from local authorities in respect of their water undertaking as such.

The Reservoirs (Safety Provisions) Act, 1930, however, now obliges water undertakers to cause certain inspections and reports to be made of large reservoirs and to keep certain records. In the case of pre-existing reservoirs, inspections must have been made by qualified engineers within three years from the Act, on the making of any alterations and generally at intervals not longer than ten years (*h*). Reports of the result of inspections must be made in the prescribed form and sent to the water undertakers, and notice of the existence and place of inspection advertised by them (*i*). Records must be kept of water levels, leakages and such other matters as may be prescribed (*k*). [830]

(*g*) Gas Regulation Act, 1920, s. 15; 8 Halsbury's Statutes 1290.

(*h*) Reservoirs (Safety Provisions) Act, 1930, s. 2; 23 Halsbury's Statutes 757.

(*i*) *Ibid.*, ss. 2, 4; *ibid.*, 757.

(*k*) *Ibid.*, s. 3; *ibid.*, 760.

Other Returns.—The following are some of the reports and returns, not referred to above, which are of interest and relevance to local authorities. They are listed here alphabetically :

Agricultural Education.—An annual statement of work has to be prepared by the local authority providing such.

Allotments.—An annual return for the year ending in December (Form 368/L.A.) has to be sent to the Minister of Agriculture. This gives particulars of the land held at the date of the previous return, new land purchased or rented, land given up, the number of applicants on the list, those supplied with allotment gardens, and particulars of steps which are being taken to meet the needs of unsatisfied applicants (l).

Analysts and Food and Drugs Authorities.—Quarterly reports must be made by analysts to appointing authorities, giving the number of articles analysed by them, the result of each analysis, the sum paid in respect thereof and any proceedings taken ; the report is to be presented at the next meeting of the authority. A certified copy of each report is, as soon as submitted, to be sent by the authority to the M. of H. (m). (In Wales this is sent to the Welsh Board of Health.)

Canal Boats.—On or before January 21 registration and sanitary authorities must send their annual report to the Minister of Health (n).

Charity Trustees.—The trustees have to make out accounts to be audited and copy to be sent within fourteen days after Lady Day to the Charity Commissioners. In the case of a non-ecclesiastical charity, a copy must also be sent to the chairman of the parish meeting (o).

Children and Young Persons.—An annual statement of parental contributions under approved school orders collected during the year must be sent to the H.O. by the responsible local authority.

Clubs.—The secretary of every club occupying premises habitually used for the purposes of a club, and in which intoxicating liquor is supplied to members or guests, must furnish the clerk to the justices with a return containing particulars as to the name, objects, membership, etc., of the club (p).

Coroners.—During January coroners must transmit to the Secretary of State returns of inquests held during the preceding year (q).

Destructive Insects and Pests Acts.—Information as to action taken thereunder must be forwarded to the M. of H. annually.

Entertainments.—Notification of performances taking place in which children appear who are licensed by an education authority must be given to that authority.

Factories.—Annual reports on the administration of the Factories Act, 1937, must be made to the H.O. Usually these are prepared by the sanitary inspector and give particulars of his inspections and the result thereof. Employers send a return of outworkers employed by them to the local authority.

Fertilisers and Feeding Stuffs.—Quarterly returns of samples analysed by the agricultural analyst have to be made (r) to the local authority and copies thereof forwarded to the Minister of Agriculture.

(l) See particularly Allotments Act, 1925, s. 13 ; 1 Halsbury's Statutes 329.

(m) Food and Drugs Act, 1938, s. 74.

(n) P.H.A., 1936, s. 249 (3) ; 29 Halsbury's Statutes 483.

(o) Charitable Trusts Amendment Act, 1855, s. 44 ; 2 Halsbury's Statutes 357 ; L.G.A., 1894, s. 14 (6) ; 10 Halsbury's Statutes 787.

(p) Licensing (Consolidation) Act, 1910, s. 92 (3) ; 9 Halsbury's Statutes 1036.

(q) Coroners Act, 1887, s. 28 ; 3 Halsbury's Statutes 772 ; Coroners (Amendment) Act, 1926, s. 28 (1) ; 3 Halsbury's Statutes 794.

(r) Fertilisers and Feeding Stuffs Act, 1926, s. 18 ; 1 Halsbury's Statutes 150.

Home Nursing Associations.—These furnish reports to the local M.O.H. (county or county borough), usually at quarterly intervals.

Injurious Weeds Order.—Information as to proceedings taken thereunder is supplied annually to M. of A.

Land Drainage.—Drainage boards must submit annual reports of their proceedings to the Minister of Agriculture and at the same time send copies to county and county borough councils in their districts and, if internal boards, also to catchment boards (s).

Lighthouses.—Returns as to the position, character, etc., of local lighthouses, buoys and beacons on the coast are made to Trinity House (t).

Local Taxation.—Annual returns giving expenditure and income, outstanding loan debt, etc., and a return of local taxation licences (penalties and repayments) have to be sent to the M. of H.

Magistrates.—Clerks of local authorities who hold commissions of the peace send a return of magistrates who have become disqualified or died during the year ending December to the Crown Office, House of Lords. Recently a further return has been asked for by the H.O. and now a list of the names and addresses of justices of the peace must be sent to the H.O. in January each year.

Meteorological Observations.—A monthly return is sent to the Air Ministry.

Milk.—A return relating to the number and class of licences has to be sent to the M. of H. (u). A return of licences for the production of tuberculin tested and accredited milk is sent to the Milk Marketing Board. In practice, local authorities send returns of producers of tuberculin tested milk to the T.T. Milk Producers' Association, London. The Ministry of Labour is supplied with a return of changes in the list of registered milk sellers.

Probation.—Probation committees have to prepare and send to the local authority concerned an estimate of the expenditure for the ensuing financial year in December each year (a). Clerks to justices in January each year have to send to the Home Secretary a return of the probation officers employed at the court and of persons, not being probation officers, named in probation orders, and a return of persons dealt with during the preceding year under the Probation of Offenders Act, 1907 (b).

Rats and Mice Destruction Act.—Information is supplied annually to the M. of H. as to proceedings taken thereunder. Annual returns of deratisation in port health districts are sent to the M. of H. Reports on work done in National Rat Week are sent to the M. of A. & F.

Registrars of Births and Deaths.—See "Public Health—Vaccination Returns," *ante*, at p. 353. On the 1st day of January, April, July and October registrars must furnish to the Registrar-General quarterly returns of births and deaths. They have to furnish to registration officers returns of deaths for each preceding quarter (c). Similarly, they apply to the officiating minister of every church wherein marriages may be solemnized, and to the authorised person of every registered

(s) Land Drainage Act, 1930, s. 49; 23 Halsbury's Statutes 565.

(t) Merchant Shipping Act, 1894, s. 652; 18 Halsbury's Statutes 383.

(u) Milk (Special Designations) Order, 1936; 29 Halsbury's Statutes, 169.

(a) Probation Rules, 1926, r. 79.

(b) *Ibid.*, r. 57.

(c) Parliamentary and Municipal Registration Act, 1878, s. 11; 7 Halsbury's Statutes 462; Representation of the People Act, 1918, Sched. VI. (4); 7 Halsbury's Statutes 588.

building for certified copies of all entries of marriage or for "nil" certificates during the last quarter and deliver them to the Superintendent-Registrar. They also have to deliver to him certified copies of births and deaths for the last quarter, together with quarterly accounts of fees, allowances and expenses, for verification by the Superintendent-Registrar. The latter must deliver the quarterly copies so received by him to the Registrar-General, together with his own quarterly account of fees, allowances and expenses, not later than the end of the month following the conclusion of the quarter.

Superintendent-Registrars must make an annual return, to councils of counties and county boroughs, of the amount received by them in each year to September 29, verified by a statutory declaration that the amount so returned does not exceed the total amount received (*d*).

Rent Restriction Acts.—Information as to proceedings taken thereunder is supplied annually to the M. of H.

Small Holdings.—A return (Form A.756(L.S.)) for each year ending December has to be sent to the Minister of Agriculture. This gives particulars of applications received by the authority, those approved, the applicants settled on the land, land acquired, land leased for other purposes and land sold.

Superannuation.—Local authorities who will be administering authorities under the L.G. Superannuation Act, 1937, must obtain quinquennially, and may obtain at any time, an actuarial valuation and report on the assets and liabilities of their superannuation fund. A copy of any such valuation or report must be sent to the Minister of Health (*e*).

Tuberculosis (Animals).—The Orders of 1925 and 1936 require quarterly returns of cases dealt with, *i.e.* animals, and claims for grant towards compensation. [831]

(*d*) Poor Law Officers' Superannuation Act, 1896, s. 17; 12 Halsbury's Statutes 953.

(*e*) L.G. Superannuation Act, 1937, s. 22; 30 Halsbury's Statutes 405.

REPRESENTATIVE BODY

See PARISH PROPERTY.

RESERVOIRS

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*See also titles : WATER SUPPLY ;
WATERWORKS.*

Classes of Reservoirs.—Reservoirs may be divided into two categories—first, those constructed or operated by persons, companies or local authorities without statutory powers, and secondly, those constructed or operated with such powers. Reservoirs may also be sub-divided into large and small reservoirs, a large reservoir being defined as “a reservoir (whether constructed under statutory powers or not and whether intended for the purpose of impounding water or for service purposes) designed to hold, or capable of holding, more than five million gallons of water above the natural level of any part of the land adjoining the reservoir ” (a). [832]

Rights and Liabilities of Private Owners.—A landowner may, as an incident of his ownership, collect, store, use or supply to others the water percolating through his land (b) subject, when the water flows in defined channels, to the corresponding rights of other riparian owners. In many parts of the country companies or persons supply water for general consumption without any special statutory powers, and for that purpose collect and store water in reservoirs. Their rights and liabilities are governed by the general law, which is that if a person brings on to his land any matter, which, if it escapes, may prove injurious to his neighbour's property, such as a large body of water, he is liable to make compensation for any injury that may accrue from its escape out of his land ; and it is no defence, if it escapes and causes damage to his neighbour, that the injury was caused without any default or negligence on his part (c). Where the escape of the water is caused by an Act of God or *vis major*, the defendant is not liable for the damage. It

(a) Reservoirs (Safety Provisions) Act, 1930, s. 10 ; 23 Halsbury's Statutes 762.

(b) *Chasemore v. Richards* (1859), 7 H. L. Cas. 349 ; 23 J. P. 596 ; 44 Digest 34, 252.

(c) *Rylands v. Fletcher* (1868), L. R. 3 H. L. 330 ; 33 J. P. 70 ; 36 Digest 187, 311. In this case the appellant held a lease of mines and the respondent owned a mill standing on land adjoining that under which the mines were worked. The respondent employed a competent engineer and contractor to construct a reservoir who did not take care to block up certain shafts leading to disused mines. Shortly after the water was let into the reservoir, it penetrated into some of the shafts and through the old passages and so flooded the appellant's mine ; it was held that he was entitled to recover damages from the respondent in respect of the injury.

appears that this principle holds good whether the reservoir is constructed under statutory powers or not (*d*). [833]

Rights and Liabilities under Statutory Powers.—Where reservoirs are constructed under statutory powers, as for instance by the conservators of a river, a canal company or a company or local authority owning waterworks, there is no liability if the water escapes, unless the powers are exceeded or there is negligence in the exercise of them; but the injured party may be entitled to compensation if the Act so provides (*e*). Many Acts of Parliament authorising the construction of reservoirs, however, contain provisions for the protection of millowners and landowners which make the undertakers responsible for any damage caused by the bursting of the reservoir. The Act (*f*) authorising the construction of the Elan Valley Works of the Birmingham Corporation contains such a provision, whereas that authorising the Vyrnwy Works of the Liverpool Corporation does not (*g*).

One local Act made it obligatory on the undertakers to make good to landowners and others any damage sustained by them by reason or in consequence of the failure or giving way of the reservoir, but exempted them from liability in respect of an injury caused by an Act of God and not arising from any default of the undertakers or defect in the works (*h*). [834]

Power to Construct Reservoirs. *Under the General Law.*—For the purpose of providing their district or any part thereof, with a supply of water, a local authority (*i*) may, subject to certain provisions of the P.H.A., 1936 (*k*), construct, take on lease, or, with the approval of the Minister of Health, purchase by agreement, waterworks (including reservoirs) (*l*). Water belonging to private persons cannot be impounded by or diverted into a reservoir, nor can such waters be injuriously affected without consent: a local authority have no power for the purpose of supplying water to their district to alter the flow of water in a stream without the consent in writing of the lower riparian owners (*m*), as by so doing they are injuriously affecting the common law rights of such owners and will be restrained from so doing without any proof of sensible damage (*n*). Where water flows in a defined channel the issue by the Minister of Health of a provisional order and the putting into operation of the powers thereby conferred will not relieve the local authority from the obligation of obtaining the written consents of any owners whose rights will be injuriously affected by the works. Such rights cannot be compulsorily acquired under such provisional order (*o*), but if the water does not flow in a defined channel

(*d*) *Nichols v. Marsland* (1876), 2 Ex. D. 1; 41 J. P. 500; 36 Digest 197, 376.

(*e*) *Manchester Corporation v. Farnworth*, [1930] A. C. 171, 183; Digest (Supp.).
Geddis v. Bann Reservoir (Proprietors) (1878), 3 App. Cas. 430; 44 Digest 59, 430;
Blaggrave v. Bristol Waterworks Co. (1856), 1 H. & N. 369; 43 Digest 1074, 115.

(*f*) Birmingham Corpn. Water Act, 1892 (55 & 56 Vict. c. clxxiii.).

(*g*) Liverpool Corpn. Waterworks Act, 1880 (43 & 44 Vict. c. cxliii.).

(*h*) Bury Corpn. Waterworks Act, 1889 (52 & 53 Vict. c. clxxxii), s. 7.

(*i*) "Local Authority" means the council of a borough, urban district or rural district; P.H.A., 1936, s. 1 (2); 29 Halsbury's Statutes 322.

(*k*) *Ibid.*, ss. 116, 331, 332; *ibid.*, 409, 531.

(*l*) *Ibid.*, ss. 343, 116.

(*m*) *Ibid.*, s. 331.

(*n*) *Roberts v. Gwyrfai R.D.C.*, [1899] 2 Ch. 608; 64 J. P. 52; 44 Digest 20, 114.

(*o*) P.H.A., 1936, s. 331. See note (*b*) to this section—Lumley's Public Health, 11th ed., Vol. I.

and no rights other than those of the owner of the land upon which a spring is situate are involved, such land may be compulsorily acquired under a provisional order, and with it the right to store and use the water arising therefrom. [835]

A local authority may not take any steps for supplying water in any part of their district in which they are not already supplying water and which is within the limits of supply of any statutory water undertakers, without the consent of those undertakers. Consent may not be unreasonably withheld, and any question on that point must be referred to the Minister of Health, whose decision is final (*p*). This provision applies to new waterworks and not to improvements of or additions to waterworks previously existing, *e.g.* the construction of an additional reservoir (*q*).

If a local authority desire under their general powers to construct any reservoir other than a service reservoir or tank which will not contain more than 100,000 gallons, they must comply with the appropriate provisions of the Act as to advertisement (*r*).

A local authority or a county council may take water from any river, stream or lake or the feeders thereof, either within or without the district of the local authority or the county, for the purpose of affording a water supply for houses for persons of the working class, and do all such acts (*semble* the construction of a reservoir for the purpose of storing such water) as may be necessary for affording a water supply to such houses without being under the necessity of obtaining the consents required by the P.H.A., 1936 (*s*). Such local authority or county council, however, are under the prior obligation of affording a sufficient supply of water to any houses or agricultural holdings or other premises that may be deprived thereof by reason of such abstraction, and no local authority or county council may abstract any water which any local authority, corporation, company or person are empowered by Act of Parliament to impound, take or use for the purpose of supply within any area, or any water the abstraction of which would, in the opinion of the Minister of Health, injuriously affect the working or management of any canal or inland navigation (*t*). [836]

Under the Powers of Special Acts.—Local authorities generally find it desirable to promote a Bill for a special Act empowering them to impound waters and to construct reservoirs for the purpose of storing such waters. The special Act usually empowers the undertakers to make and maintain the various works, including reservoirs and ancillary works, in the lines and situation and upon the land delineated in the deposited plans and described in the deposited book of reference. The special Act also generally contains certain provisions making it obligatory upon the undertakers to provide for compensation water whereby riparian owners and occupiers are compensated for the loss of the water intercepted or abstracted by the construction or maintenance of the waterworks. Sometimes the special Act provides that a reservoir is to be constructed and maintained solely for the purpose of providing such compensation water (*u*). It is generally provided

(*p*) P.H.A., 1936, s. 116 (2); 29 Halsbury's Statutes 409.

(*q*) *Cleveland Water Co. v. Redcar Local Board*, [1895] 1 Ch. 168; 59 J. P. 7; 43 Digest 1059, 15.

(*r*) P.H.A., 1936, s. 118; 29 Halsbury's Statutes 411.

(*s*) *Ibid.*, ss. 333, 334; *ibid.*, 531, 533.

(*t*) Housing Act, 1936, s. 78; 29 Halsbury's Statutes 622.

(*u*) Leeds Corpn. Water Act, 1907.

that the undertakers shall send down the stream a regular and definite flow of water throughout the year, and the amount is calculated on the basis of one-third, or sometimes one-quarter, of the mean available rainfall during three consecutive dry years (*a*). Owners of fishing rights are often compensated in addition by the payment of sums of money (*b*).
[837]

Security of Reservoirs.—Where reservoirs are constructed by local authorities under their general powers, certain provisions relating to the prompt repair of reservoirs believed to be insecure must be complied with (*c*). In the case of large reservoirs, however, very important provisions have recently been enacted to secure their proper construction in the first instance and periodical inspection after construction (*d*).

After January 1, 1931, no large reservoir can be constructed unless a qualified civil engineer (as defined by the Act (*d*)) is employed to design and supervise its construction.

All large reservoirs, whether constructed before or after January 1, 1931, must be periodically inspected and the undertakers are obliged, subject to a right of appeal, to carry out such recommendations as the inspecting engineer may make in his report. After the first inspection, the time for which is laid down in the Act, inspections must take place at intervals of not more than ten years, unless the report of the inspector recommends that the next inspection shall be made within a period of less than ten years. Where alterations to any large reservoir are carried out, which might affect the safety of the reservoir, unless a qualified civil engineer is employed to design and supervise the carrying out of the alterations, the undertakers must cause an inspection of the reservoir and a report of the result thereof to be made as soon as practicable after the alterations have been completed.

Every such inspection and report must be made by an independent qualified civil engineer appointed for the purpose by the undertakers: where, however, they have in their employ a qualified civil engineer within the meaning of the Act, who is responsible to them for the maintenance of the reservoir, the undertakers may appoint that engineer to inspect and report. [838]

When an engineer is appointed to make an inspection, it is the duty of the undertakers to publish notice of the fact and of the name of the engineer in the prescribed manner, and to afford him all reasonable facilities and furnish him with all records required to be kept by them under the Act, and with copies of the certificates delivered to them, and all information and particulars which he may require and, in the case of an inspection subsequent to the first inspection, with copies of all reports made on every previous inspection made under the Act. The penalty for not publishing the name of the engineer is £20.

The undertakers are obliged to carry into effect, as soon as practicable, under the supervision of a qualified civil engineer any measures in the interests of safety recommended in the report.
[839]

Any grievance felt by the undertakers at any recommendation contained in any such report as to the time within which the next

(a) Torquay Corp'n. Act, 1934, s. 25.

(b) *Ibid.*, s. 33.

(c) Waterworks Clauses Act, 1863, ss. 3—11; 20 Halsbury's Statutes, 187—190.

(d) Reservoirs (Safety Provisions) Act, 1930, s. 1; 23 Halsbury's Statutes, 755.

inspection is to be made or as to any measures to be taken in the interests of safety may be referred to such independent qualified civil engineer as may be appointed by agreement between them and the engineer who made the report, or, in default of agreement, to such person as the Secretary of State may appoint, and the referee can make such modification in the report as he thinks fit and the report shall have effect accordingly.

An independent engineer in the above connection means an engineer who is not in the employment of the undertakers otherwise than in a consultant capacity, and who is not the engineer responsible for the design or construction of the reservoir (e). [840]

The Act also lays down that the undertakers shall keep in relation to any large reservoir records giving information at the prescribed intervals as to (a) water levels and depth of water including the flow of water over the waste weir or overflow; (b) leakage, settlements of walls and other works and repairs; (c) such other matters as may be prescribed.

It is further provided that within one month after the receipt of certificates and reports made under the Act, the undertakers must publish notice of the fact and of the place where the certificate or report may be inspected (f). [841]

The undertakers are also placed under obligation by the Act, subject to a penalty for failure of ten pounds, to do the following things on being so requested by the council of any county, municipal or metropolitan borough or district likely to be affected by the escape of water from the reservoir, or by any person resident in or interested in property in any area likely to be so affected, viz: (a) give information as to whether any such certificate or report has been received and such information as may reasonably be required as to the measures (if any) taken or proposed to be taken to give effect to any recommendations in any such report; (b) produce for inspection any certificate or report which the undertakers are required to keep; (c) supply a certified copy of any such certificate or report on payment of the reasonable cost of copying (g).

The council of any of the before-mentioned authorities may, in the event of alleged default on the part of the undertakers in complying with the foregoing provisions, apply to the court of quarter sessions for the county or borough in which the reservoir is situate for such order in relation to the reservoir as seems to the court to be required in the interests of safety, and the court may make such order. The court may also, whether they make such order or not, order the undertakers to forfeit to the Crown such sum not exceeding £500, as to the court may seem fit, for non-compliance with the Act (h). [842]

With certain modifications, the Act applies to alterations of reservoirs, where they are large reservoirs or become such in consequence of the alterations (i).

The fact that the reservoir was constructed after the commencement of the Act under statutory powers granted after the passing of the Act does not relieve the undertakers of liability for damage or injury caused by the escape of water from the reservoir (k).

For the purposes of the Act a panel of civil engineers has been

(e) Reservoirs (Safety Provisions) Act, 1930, s. 2; 23 Halsbury's Statutes, 757.

(f) *Ibid.*, s. 3.

(g) *Ibid.*, s. 4.

(h) *Ibid.*, s. 5.

(i) *Ibid.*, s. 6.

(k) *Ibid.*, s. 7.

constituted, and regulations have been made as provided by the Act (*l*).
[843]

London.—Under sect. 4 of the Reservoirs (Safety Provisions) Act, 1930 (*m*), the L.C.C. and metropolitan borough councils are in the same position as other local authorities. [844]

(*l*) S.R. & O., 1930, 1125, 1126.
(*m*) 23 Halsbury's Statutes, 760.

RESOLUTIONS

See MEETINGS.

RESTRICTIVE COVENANTS

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See also titles : CONVEYANCING ;
LOCAL LAND CHARGES ;
POSITIVE COVENANTS.

For the General Law relating to restrictive covenants, see Halsbury's Laws of England, 1st ed., Vol. XXV., title SALE OF LAND.

For Forms of restrictive covenants, see Encyclopædia of Forms and Precedents, 2nd ed., Vol. XV., title SALE OF LAND.

Nature of Restrictive Covenants.—The term “restrictive covenant” generally denotes a covenant negative in nature which has been so drawn that the benefit of it runs with one parcel of land and the burden of it attaches to another neighbouring parcel of land, so as to be enforceable against the owner or occupier for the time being of that land. Except as between covenantee and covenantor or where the covenant runs with the land at law (as in the case of leases), it is an equitable right or interest, and must possess the characteristics set out below. It must be negative in substance, although it may be positive in form (*a*).

(*a*) *Catt v. Tourle* (1869), 4 Ch. App. 654 ; 40 Digest 327, 2764.

The covenantee must retain land which is benefited by the covenant in proximity to the land affected by the covenant (*b*). There are a number of statutory exceptions to this rule which enable a local authority to enforce a covenant entered into with them by the owner of land, notwithstanding that they are not possessed of or interested in any land for the benefit of which the covenant was made. A local authority may enforce such a covenant when imposed on the sale or exchange of land acquired under the Housing Act, 1936, or given by the owner of land for the purposes of that Act (*c*), as if they were possessed of or interested in land benefited by the covenant. Similarly a local authority may enter into an agreement with a person having an interest in land restricting the planning, development or use of that land, and may enforce such agreement as if they were possessed of adjacent land for the benefit of which the agreement had been made (*d*). A number of local authorities have obtained under local Acts similar powers to enforce particular types of covenant (*e*). [845]

The restrictive covenant must be annexed to the land retained by the covenantee. It may be so annexed either by express words contained in the deed under which it is imposed, or by implication (*f*). A restrictive covenant relating to land is deemed to be made with the covenantee and his successors in title, including the owners and occupiers for the time being of the land intended to be benefited by the covenant, and the persons deriving title under him or them (*g*). It is, therefore, always desirable to refer specifically in the deed of covenant to the land intended to be benefited thereby (*h*).

The benefit of a restrictive covenant can be validly annexed to the site of a public road, but if the road is taken over by the local authority the owner of the soil ceases to have sufficient interest in it to enable him to enforce the covenant (*i*).

A restrictive covenant made after 1925 and relating to any land of a covenantor or capable of being bound by him is, unless a contrary intention is expressed, deemed to be made by the covenantor on behalf of himself, his successors in title, including the owners or occupiers for the time being of the land, and the persons deriving title under him or them (*k*). [846]

Where an assignee seeks to enforce a restrictive covenant, he must prove that he is the assignee of the benefit of the covenant. This can be done either by showing that the covenant is annexed to the land which he has acquired (*l*), or that he has had the benefit of the covenant as well as the land expressly assigned to him (*m*). If the covenant has been annexed to the land, then it is immaterial that the assignee was

(*b*) *Formby v. Barker*, [1903] 2 Ch. 539 ; 40 Digest 306, 2626 ; *L.C.C. v. Allen*, [1914] 3 K. B. 642 ; 40 Digest 302, 2602.

(*c*) Housing Act, 1936, s. 148 ; 29 Halsbury's Statutes 665.

(*d*) Town and Country Planning Act, 1932, s. 34 ; 25 Halsbury's Statutes 506.

(*e*) See West Ham Corp'n. Act, 1893, s. 95 (to enforce covenants relating to plans of buildings) and Green Belt (London and Home Counties) Bill, 1937-1938 (to enforce covenants entered into with L.C.C. in relation to lands acquired for the purposes of the Green Belt around London).

(*f*) *Rogers v. Hosegood*, [1900] 2 Ch. 388 ; 40 Digest 312, 2664.

(*g*) Law of Property Act, 1925, s. 78 ; 15 Halsbury's Statutes 256.

(*h*) *Renals v. Cowlishaw* (1879), 11 Ch. D. 866 ; 40 Digest 316, 2686.

(*i*) *Kelly v. Barrett*, [1924] 2 Ch. 379 ; 40 Digest 303, 2606.

(*k*) Law of Property Act, 1925, s. 79 ; 15 Halsbury's Statutes 257.

(*l*) *Rogers v. Hosegood*, *supra* ; *Reid v. Bickerstaff*, [1909] 2 Ch. 305 ; 40 Digest 312, 2665 ; *Drake v. Gray*, [1936] Ch. 451 ; Digest (Supp.).

(*m*) *Reid v. Bickerstaff*, *supra*.

ignorant of the existence of the covenant at the date when he acquired the land (*n*). [847]

The assignee may prove that the benefit of the covenant has been annexed to his land by showing that it was imposed under a general building scheme, for it can then be enforced by and against all the owners of the land affected by the scheme. To create a general building scheme the following conditions must exist :

(a) Both the plaintiff and the defendant to the action for the breach of the restrictive covenant must derive their title to the land from a common vendor.

(b) Before the sale of the plots to the plaintiff and defendant, or their predecessors in title, the vendor must have laid out his estate for sale in lots subject to the restrictions which it was intended to impose on all the lots, and which were only consistent with some general scheme for the development of the land.

(c) The common vendor must have intended that the benefit of the restrictions should pass to each purchaser. All the circumstances of the case are material in judging whether such intention existed, although where restrictions are calculated to enhance the value of each lot, that intention is readily inferred.

(d) The respective purchasers must have bought their lots on the understanding that the restrictions were to enure for the benefit of the other lots (*o*).

(e) The geographical area affected by the general scheme must be ascertainable with reasonable definiteness (*p*).

A slight variation in the form of the covenants given by each purchaser will not affect the enforcement of the general provisions of a building scheme (*q*).

The intention that the covenants are to be annexed to land for the benefit of purchasers *inter se* may be implied, even where there is no pre-existing general building scheme, if that intention can be implied from the surrounding circumstances, such as where plots of land subject to similar restrictions are put up together as a whole for sale by auction (*r*), or are offered simultaneously to the public (*s*). It must be decided in each case whether the restrictions are imposed merely for the benefit of the vendor or are intended to protect the several purchasers, regard being had to all the circumstances—*e.g.*, the terms of the conveyances, the particulars and conditions of sale and sale plans, and statements made at auctions. If the purchasers were not aware of the existence of the covenants at the date of the purchase, it tends to show that those covenants were not made for their benefit, but for the benefit of the common vendor (*t*). If, however, the vendor sold the whole of his property, there is a strong inference that the covenants are for the benefit of the purchasers (*u*). [848]

Sometimes the conditions contained in a general building scheme reserve a power to the vendor to waive or vary any of the conditions as to any unsold lot, and then the vendor cannot be required to enter

(*n*) *Rogers v. Hosegood*, [1900] 2 Ch. 388 ; 40 Digest 312, 2664.

(*o*) Cf. *White v. Bijou Mansions, Ltd.*, [1938] Ch. 351 ; [1938] 1 All E. R. 546 ; Digest (Supp.) ; *Elliston v. Reacher*, [1908] 2 Ch. 374 at p. 384 ; *affd.* C.A., *ibid.*, 665 ; 40 Digest 309, 2646.

(*p*) *Torbay Hotel, Ltd. v. Jenkins*, [1927] 2 Ch. 225 ; 40 Digest 310, 2651.

(*q*) *Harrison v. Good* (1871), L. R. 11 Eq. 338 ; 40 Digest 326, 2754.

(*r*) *Nottingham Patent Brick and Tile Co. v. Butler* (1886), 16 Q. B. D. 778 ; 40 Digest 314, 2674.

(*s*) *Coles v. Sims* (1853), Kay, 56 ; 40 Digest 321, 2718.

(*t*) *Keates v. Lyon* (1869), 4 Ch. App. 218 ; 40 Digest 314, 2673.

(*u*) *Nottingham Patent Brick and Tile Co. v. Butler*, *supra*.

into any corresponding covenant (a). In most cases this power must be exercised *bona fide*, and will not justify a radical alteration in the character of the estate, but if exercised *bona fide* and within proper limits, it enables the vendor on a subsequent sale to convey land free from restrictions (b). [849]

A restrictive covenant, being an equitable interest, can be enforced only against a purchaser for value of the legal estate in the land affected by it, where he has had actual or constructive notice of its existence at the time he acquired the land (c). He is deemed to have constructive notice of the covenant if it would have come to his knowledge had he required a full title of the statutory period (d) to be made out to the land, and properly investigated such title in accordance with the usual conveyancing practice. [850]

Registration of Restrictive Covenant as Land Charge.—Where the restrictive covenant (not being one between lessor and lessee) is made after December 31, 1925, it must be registered in the Land Charges Register in the name of the estate owner whose land is affected thereby (e). Such registration constitutes actual notice of the restriction to all persons and for all purposes connected with the land affected (f). Conversely, if the covenant is not registered, it is void against a purchaser of the legal estate in the land for money or money's worth (g).

It is, therefore, essential that the covenantee should register the covenant against the covenantor in the land charges register without delay. If there is any danger of the covenantor re-selling the property immediately following upon the completion of the conveyance and before the registration can be effected, then the covenantee should register a priority notice at least two days before the conveyance is executed (h), and he will then be protected provided that application for registration of the restriction is made within fourteen days thereafter. The provision as to registration in the land charges register does not apply to land registered under the Land Registration Act, 1925 (i). [851]

Where the restriction relates to the mode of user of land or buildings and is imposed under a covenant or agreement with a local authority after December 31, 1925, it is registerable as a local land charge in the register kept by the registrar of local land charges of the local authority, and not in the land charges register (k). If it is not so registered, it is void as against a purchaser for money or money's worth of a legal estate in the land affected thereby. [852]

Where the vendor enters into a restrictive covenant with the purchaser of land, the latter should, as an additional precaution to registering the restriction as a land charge, arrange for a memorandum of the restriction to be endorsed on a deed retained by the vendor relating to the land affected (l). Where it is the purchaser who gives the covenant, the vendor should either obtain a covenant from him to

(a) *Sidney v. Clarkson* (1865), 35 Beav. 118; 40 Digest 309, 2643.

(b) *Whitehouse v. Hugh*, [1906] 2 Ch. 283; 40 Digest 309, 2645.

(c) *Carter v. Williams* (1870), L. R. 9 Eq. 678; 40 Digest 324, 2736; Law of Property Act, 1925, s. 2 (5) (a); 15 Halsbury's Statutes 183.

(d) See *ibid.*, s. 44; *ibid.*, 221.

(e) Land Charges Act, 1925, s. 10 (1), Class D (ii.); *ibid.*, 535.

(f) Law of Property Act, 1925, s. 108; *ibid.*, 377.

(g) *Ibid.*, s. 199; *ibid.*, 378; Land Charges Act, 1925, s. 13 (2); *ibid.*, 537.

(h) Law of Property (Amendment) Act, 1926, s. 4; *ibid.*, 548.

(i) Land Charges Act, 1925, s. 23 (1); *ibid.*, 544.

(k) *Ibid.*, s. 15 (7) (b); *ibid.*, 540.

(l) Law of Property Act, 1925, s. 200; *ibid.*, 379.

produce the conveyance, or obtain a duplicate of the conveyance containing the covenant executed by the purchaser.

So far as the purchaser of land is concerned, strictly the doctrine of notice requires him to search against every person who has had an interest in the land since 1925, or alternatively to obtain the production of an official certificate of search made upon every transaction effected after that date. [853]

Registration does not, of course, affect the duty of the vendor to disclose to the purchaser prior to the contract of sale the existence of all restrictive covenants affecting the land, and if he fails to do so, the purchaser may be entitled to rescind the contract (*m*) and reclaim his deposit (*n*), or claim compensation for a serious misrepresentation, unless the vendor can show that the covenant has been waived or released (*o*). [854]

The doctrine of notice affects lessees, as well as purchasers of the freehold interest in the land affected by the covenant. In a lease granted prior to January 1, 1926, the lessee had constructive notice of any restrictive covenant contained in a deed forming part of his lessor's title (*p*), but if the lease has been created since December 31, 1925, the lessee has not notice of the restriction unless it is contained in his lease or it has been registered as a land charge (*q*), and in such circumstances the onus is on the plaintiff to prove that the lessee had notice of the restrictive covenant affecting the land (*r*). An under-lessee has constructive notice of the covenants contained in the immediately superior lease, but not in any higher lease, while the assignee from him has not even constructive notice of the contents of the immediately superior lease (*s*).

The doctrine of notice does not apply to a person obtaining an equitable interest in land, as he takes subject to any restrictive covenant affecting it. Similarly, a mere occupier of land is bound by a restrictive covenant affecting it, irrespective of notice (*t*).

A local authority obtaining a charge on land under sect. 291 of the P.H.A., 1936, is subject to any restrictive covenant affecting the land, and cannot sell the land free from the restriction (*u*). [855]

Where land is registered under the Land Registration Act, 1925, the transferee takes subject to all entries made on the register, including notice of any restrictive covenant affecting the land. The registered proprietor of the land and all persons deriving title under him, other than incumbrancers or other persons who at the time when the notice was entered were not bound by the covenant, are deemed to be affected with notice of the covenant as an incumbrance on the land (*x*). [856]

(*m*) *Re Ebsworth and Tidy's Contract* (1889), 42 Ch. D. 23; 40 Digest 148, 1172.

(*n*) *Hone v. Gakstatter* (1909), 53 Sol. Jo. 286; 40 Digest, 135, 1068.

(*o*) *Hepworth v. Pickles*, [1900] 1 Ch. 108; 40 Digest 148, 1174.

(*p*) *Palman v. Harland* (1881), 17 Ch. D. 353; 40 Digest 155, 1236.

(*q*) Law of Property Act, 1925, ss. 44 (5) and 198 (1); 15 Halsbury's Statutes 222, 377.

(*r*) *Shears v. Wells*, [1936] 1 All E. R. 832; Digest (Supp.).

(*s*) Law of Property Act, 1925, ss. 44 (4), (5); 15 Halsbury's Statutes 222.

(*t*) *Mander v. Falcke*, [1891] 2 Ch. 554; 30 Digest 487, 1481.

(*u*) *Tendring Union Guardians v. Downton*, [1891] 3 Ch. 265; 26 Digest 537, 2364; decided under P.H.A., 1875, s. 257; 13 Halsbury's Statutes, 732.

(*x*) Land Registration Act, 1925, s. 50; 15 Halsbury's Statutes 465. See also Land Registration Rules, 1925, S.R. & O., 1925, No. 1093, and Land Registration Rules, 1930, S.R. & O., 1930, No. 211; 23 Halsbury's Statutes, 485.

Persons who can Enforce Restrictive Covenants.—Where a restrictive covenant complies with the conditions set out above, it may be enforced by and against the freeholder (*a*), lessee (*b*), underlessee (*c*), yearly tenant (*d*) or even an occupier (*e*) of the land to which the benefit of the covenant has been annexed. [857]

It has been seen that a lessee or underlessee can enforce restrictive covenants affecting the freehold of land, or have such covenants enforced against him. Such covenants may affect the freehold before the lease is created, or the lessor may enter into a restrictive covenant with the lessee affecting adjoining premises, and subject to the provisions as to notice it is then binding on the lessees of such premises (*f*). Lessees may also be bound *inter se* by restrictive covenants where the leases are granted under a general building scheme (*g*). [858]

Special Position of a Local Authority.—A local authority, like any other statutory corporation, can apparently impose restrictive covenants upon the sale of their surplus land (*h*), but a municipal corporation cannot impose a restrictive covenant on unsold lots unless sanctioned by the Minister of Health (*i*).

Where a local authority in exercise of their statutory powers purchase land, they may enter into restrictive covenants for the benefit of the land retained by the vendor, provided the covenants do not prohibit the exercise of powers imperative (and not merely ancillary or permissive) for their purposes (*k*), otherwise such covenants would be *ultra vires* the local authority and void. If the local authority have entered into a restrictive covenant which is *ultra vires* the authority, then the land can be sold free from such covenant (*l*). A local authority may likewise take a conveyance of land subject to restrictive covenants previously imposed upon it. [859]

Where, however, a local authority acquire land compulsorily under statutory powers incorporating the provisions of the Lands Clauses Consolidation Act, 1845, or similar provisions, they take free from any restrictive covenant which attaches to the land (*m*), and the only remedy available to the covenantee or owner of the land intended to be benefited by the covenant is to claim compensation from the local authority (*n*).

This rule applies even where the local authority purchase by agreement the land affected by the covenant, provided that the statutory authority under which the purchase is made incorporates generally the provisions of the Lands Clauses Consolidation Acts (*o*). This was

- (a) *Tulk v. Moxhay* (1848), 2 Ph. 774 ; 40 Digest 313, 2667.
- (b) *Holloway Bros., Ltd. v. Hill*, [1902] 2 Ch. 612 ; 31 Digest 168, 3012.
- (c) *Teape v. Douse* (1905), 92 L. T. 319 ; 31 Digest 154, 2886.
- (d) *Wilson v. Hart* (1866), 1 Ch. App. 463 ; 31 Digest 155, 2893.
- (e) *Mander v. Falcke*, [1891] 2 Ch. 554 ; 30 Digest 487, 1481.
- (f) *Holloway Bros., Ltd. v. Hill*, *supra*.
- (g) *Spicer v. Martin* (1888), 14 App. Cas. 12 ; 40 Digest 308, 2641.
- (h) *Re Higgins and Hitchman's Contract* (1882), 21 Ch. D. 95 ; 11 Digest 287, 2144.
- (i) *Davis v. Leicester Corp.*, [1894] 2 Ch. 208 ; 40 Digest 307, 2632.
- (k) *Stourcliffe Estates Co., Ltd. v. Bournemouth Corp.*, [1910] 2 Ch. 12 ; 40 Digest 318, 2697. Cf. *A.-G. v. Poole Corp.*, [1938] Ch. 23 ; [1937] 3 All E. R. 608 ; Digest (Supp.).
- (l) *Re South Eastern Rail. Co. and Wiffin's Contract*, [1907] 2 Ch. 366 ; 40 Digest 310, 2653.
- (m) *Kirby v. Harrogate School Board*, [1896] 1 Ch. 437 ; 11 Digest 145, 297.
- (n) Lands Clauses Consolidation Act, 1845, s. 68 ; 2 Halsbury's Statutes 1134, and generally, as to compensation for land compulsorily acquired for public purposes, see Acquisition of Land (Assessment of Compensation) Act, 1919 ; 2 Halsbury's Statutes 1176.
- (o) *Kirby v. Harrogate School Board*, *supra*.

the case in purchases under the P.H.A., 1875 (*p*), but the L.G.A., 1933 (*q*), expressly excludes the provisions of the Lands Clauses Consolidation Acts relating to the acquisition of land otherwise than by agreement, and therefore acquisitions of land by agreement under that Act are subject to existing restrictive covenants (*r*).

A purchase under compulsory powers does not put an end to any restrictive covenant affecting the land. It is merely in abeyance, and if the land is sold as superfluous land, it revives even where the conveyance to the promoters was not made subject to the covenant (*s*). [860]

Some local authorities have taken power in local Acts to hold and use for special and defined purposes land acquired or taken on lease, notwithstanding any covenant, condition, restriction or stipulation inconsistent with such holding or use contained in any deed to which the authority was not a party and made before a specific date, subject to a proviso against the authority or their servants or agents permitting, causing or suffering any nuisance to the owners or occupiers of adjoining lands or premises (*t*). [861]

Normally land acquired by exchange is on the same footing as land purchased by agreement, and a local authority will take the land exchanged free from any restriction affecting it, if the acquisition is made under some statutory authority incorporating the provisions of the Lands Clauses Consolidation Acts (*u*). Sect. 176 of the L.G.A., 1933 (*a*), which excludes the provisions of the Lands Clauses Consolidation Acts relating to the acquisition of land otherwise than by agreement, applies, however, to lands acquired by way of exchange as well as to land acquired by purchase (*b*), and therefore exchanges effected under that Act are subject to existing restrictive covenants.

Where the exchange is effected by order of the Minister of Agriculture and Fisheries (*c*) the position is not clear, as the order operates so that the land taken is held upon the same uses and trusts, and subject to the same conditions, charges and incumbrances as the land given in exchange (*d*). It is apparent that if the restrictive covenants were transferred from one parcel of land to another in this fashion, their force or effect might in many cases be nullified, but there does not appear to be any authority to the effect that the restrictions continue to affect the land notwithstanding the order of the Minister (*e*). [862]

A local authority have power, with the consent of the Minister of Health, to appropriate any land belonging to them not required for the purposes for which it was acquired or appropriated, for any other approved purpose for which the local authority are authorised to acquire land. Such appropriation is, however, subject to any covenant or

(*p*) P.H.A., 1875, s. 176 (1) (now repealed, L.G.A., 1933); 18 Halsbury's Statutes 700.

(*q*) L.G.A., 1933, s. 176; 26 Halsbury's Statutes 403.

(*r*) See *Ferrar v. London Sewers Commissioners* (1869), L. R. 4 Exch. 227; 11 Digest 134, 211.

(*s*) *Bird v. Eggleton* (1885), 29 Ch. D. 1012; 31 Digest 155, 2889.

(*t*) West Ham Corp'n. Act, 1931, s. 22 (21 & 22 Geo. 5, c. 1x.).

(*u*) See *Kirby v. Harrogate School Board*, [1896] 1 Ch. 437; 11 Digest 145, 297.

(*a*) 26 Halsbury's Statutes 403.

(*b*) L.G.A., 1933, ss. 157, 176; 26 Halsbury's Statutes 391, 403.

(*c*) Under the Inclosure Acts, 1845-1899; 2 Halsbury's Statutes 443 *et seq.*

(*d*) Inclosure Act, 1845, s. 147; *ibid.*, 507.

(*e*) But see *Cooch v. Walden* (1877), 46 L. J. (Ch.) 639; 30 Digest 304, 57.

restriction affecting the use of the land in the local authority's hands (*f*). Upon the appropriation of land acquired under any enactment or statutory order incorporating the Lands Clauses Consolidation Acts, any work executed on the land after the appropriation has been effected is deemed for the purpose of sect. 68 of the Lands Clauses Consolidation Act, 1845, to have been authorised by the enactment or statutory order under which the land was acquired (*g*). Therefore if the local authority contravene any restrictive covenant in carrying out such work, compensation is payable to the injured party (*h*). [863]

Remedies for Enforcing Restrictive Covenants.—Wherever there is privity of contract (as between covenantor and covenantee) or privity of estate (as between landlord and tenant) between the person seeking to enforce the covenant and the person breaking it, a breach of a restrictive covenant may be the subject of an action for damages at common law. Even after he has conveyed away the land affected by the covenant, the original covenantor continues to be liable in damages for the acts of his assignees, unless he has limited his liability in the covenant to the period of his possession of the land (*i*). He is not, however, liable for breaches of the covenant where the land has been taken from him compulsorily (*k*). The injured party may also claim an injunction to restrain a further breach of the covenant, and this will normally be granted to him as a matter of course, if he can show that privity of contract or of estate exists (*l*), even though he has suffered no actual damage (*m*) or has himself contributed to an alteration in the character of the neighbourhood (*n*). The court has power to award damages in lieu of an injunction, but will not do so in the case of breach of an express covenant by a defendant who is liable as covenantor or assignee (*o*).

An action for a breach of covenant must be brought within twenty years (*p*), unless the covenant is given under hand, when the period is six years (*q*), the time running in each case from the date of the breach.

Where there is neither privity of contract nor privity of estate, the appropriate remedy is an injunction to restrain the continued breach of the covenant. The court has, however, power to award damages to the party injured either in addition to or in substitution for an injunction (*r*), even where damages are not specifically claimed (*s*).

(*f*) L.G.A., 1933, s. 163 (1); 26 Halsbury's Statutes 396.

(*g*) *Ibid.*, s. 163 (2); *ibid.*, 397.

(*h*) Lands Clauses Consolidation Act, 1845, s. 68; 2 Halsbury's Statutes 1184. Generally as to compensation for land compulsorily acquired for public purposes, see Acquisition of Land (Assessment of Compensation) Act, 1919; 2 Halsbury's Statutes 1176.

(*i*) *Gaskin v. Balls* (1879), 13 Ch. D. 324; 40 Digest 328, 2774.

(*k*) *Baily v. De Crespigny* (1869), L. R. 4 Q. B. 180; 31 Digest 465, 6111.

(*l*) *Doherty v. Allman* (1878), 3 App. Cas. 709; 31 Digest 352, 4943.

(*m*) *Kemp v. Sober* (1852), 19 L. T. (O. S.) 308, L. C.; 31 Digest 159, 2921.

(*n*) *Manners (Lord) v. Johnson* (1875), 1 Ch. D. 673; 28 Digest 448, 670.

(*o*) See *Doherty v. Allman*, *supra*; *Achilli v. Tovell*, [1927] 2 Ch. 243; Digest (Supp.).

(*p*) Civil Procedure Act, 1833, s. 3; 10 Halsbury's Statutes 457.

(*q*) The Limitation Act, 1623, s. 3; *ibid.*, 429.

(*r*) Chancery Amendment Act, 1858, s. 2 (now repealed, but jurisdiction preserved by The Statute Law Revision and Civil Procedure Act, 1881, s. 4 (b)); 18 Halsbury's Statutes 985; and The Statute Law Revision Act, 1898, s. 1; 18 Halsbury's Statutes 1173. See also Judicature Act, 1925, s. 43; 18 Halsbury's Statutes 212. This now depends upon the Act of 1925, ss. 37, 42, 43; see *Elmore v. Pirrie* (1887), 57 L. T. 333; 28 Digest 413, 337.

(*s*) *Catton v. Wylde* (1863), 32 Beav. 266; 28 Digest 413, 330.

Apparently, however, damages cannot be awarded unless actual damage has been suffered, although the court has power to award damages in a *quia timet* action (*t*). Furthermore, damages cannot be awarded against a person who has not been a party to the breach of the covenant. [864]

Defences to Action for Injunction or Damages.—A person who has the benefit of the covenant may in certain circumstances be debarred from enforcing it.

The covenant cannot be enforced against a purchaser for value of the legal estate without notice, actual or constructive, of the existence of the covenant (*u*). [865]

The benefit of the covenant may have been released by the covenantee, either under some express provision contained in the covenant (*a*), or by implication where for a considerable period the land affected by the covenant has been used, to the knowledge of the covenantee, in breach of the restriction, from which a waiver or release will be presumed (*b*).

Where the land is subject to a general building scheme, the vendor will be unable to release the covenant unless he has reserved power for this purpose. [866]

Wherever there is no privity of contract or of estate, the court has a discretion in granting an injunction, and in coming to a decision will have regard to all the circumstances, including the acquiescence of the plaintiff in the breach of the covenant (*c*). Acquiescence in a minor breach of the covenant does not, however, prevent a plaintiff from complaining of a greater and more serious breach (*d*). Furthermore, where the plaintiff has reserved power to vary or modify the covenant, he does not lose his right to enforce the covenant against one person because he has not enforced it against another (*e*). [867]

A restrictive covenant cannot be enforced where it has been imposed under a general building scheme, and the whole character of the neighbourhood has been so altered that the purpose for which the covenant was originally imposed must be considered at an end (*f*). The fact that the covenant has been broken in some remote part of the estate does not, however, prevent the plaintiff from enforcing it in regard to property in his neighbourhood, where the general character of that property has not been changed (*g*). [868]

Where there is a general building scheme, the plaintiff cannot enforce a breach of a restrictive covenant where he has himself committed breaches of the restriction or has actively encouraged others to do so, but he is not debarred from obtaining an injunction against serious breaches by other persons because he has committed minor breaches of the same covenant (*h*). [869]

(*t*) *Leeds Industrial Co-operative Society, Ltd. v. Slack*, [1924] A. C. 851; 28 Digest 411, 369.

(*u*) *Carter v. Williams* (1870), L. R. 9 Eq. 678; 40 Digest 324, 2736; Law of Property Act, 1925, s. 2 (5) (a); 15 Halsbury's Statutes 183.

(*a*) *Mayner v. Payne*, [1914], 2 Ch. 555; 40 Digest 309, 2647.

(*b*) *Gibson v. Doeg* (1857), 2 H. & N. 615; 31 Digest 145, 2802.

(*c*) *Sayers v. Collyer* (1884), 28 Ch. D. 103; 40 Digest 329, 2776.

(*d*) *Meredith v. Wilson* (1893), 69 L. T. 336; 40 Digest 329, 2778.

(*e*) *Zealand (Earl) v. Hislop* (1882), 7 App. Cas. 427; 31 Digest 161, 2942.

(*f*) *Bedford (Duke) v. British Museum Trustees* (1822), 2 My. & K. 552; 40 Digest 328, 2770; *Sobey v. Sainsbury*, [1913] 2 Ch. 513; 40 Digest 330, 2790. Cf. *Chatsworth Estates Co. v. Fewell*, [1931] 1 Ch. 224; Digest (Supp.).

(*g*) *Knight v. Simmonds*, [1896] 2 Ch. 294; 40 Digest 329, 2779.

(*h*) *Meredith v. Wilson*, *supra*; *Jackson v. Winnifrieth* (1882), 47 L. T. 243; 40 Digest 330, 2800; *Hooper v. Bromet* (1903), 89 L. T. 37; 40 Digest 331, 2802.

It would seem that if the land benefited by the covenant and the land subject to it become united in title and possession the covenant will be extinguished by merger, but a lessee whose lease contains restrictive covenants in accordance with a general scheme cannot extinguish such covenants by surrendering the lease to the lessor and taking a fresh lease of the property (*i*). If, however, the lessor accepts the surrender of a lease without notice of a restrictive covenant entered into by the lessee with a third person, the restriction is extinguished as against the lessor, and he can grant a new lease free from the restrictive covenant (*k*). [870]

Discharge or Modification of Restrictive Covenants by the Court.—Parliament has provided two methods by which a restrictive covenant may be discharged or modified by the court.

A local authority or any person interested in a house may apply to the county court for an order authorising the conversion of the house into several tenements, despite the provisions of a lease or restrictive covenant prohibiting or restricting such alteration. The court, upon being satisfied that owing to changes in the character of the neighbourhood the house cannot readily be let as a single tenement, but could readily be let for occupation if converted into two or more tenements, and after giving any person interested an opportunity of being heard, may vary the terms of the lease or instrument imposing the restriction to enable the house to be so converted upon such terms as it thinks just (*l*). [871]

Any person interested in freehold land or in leasehold property (other than a mining lease) having a term of more than seventy years, of which at least fifty years have run, affected by a restrictive covenant, may apply to one of the official arbitrators, who are known as "the authority," appointed for the purposes of the Acquisition of Land (Assessment of Compensation) Act, 1919, and selected by the Reference Committee under that Act. The authority has power, subject or not to the payment by the applicant of compensation to any person suffering loss, by order wholly or partially to discharge or modify the restrictions. Before making this order the authority must be satisfied either :

- (a) That by reason of changes in the character of the property or the neighbourhood, or other circumstances which they deem material, the restriction ought to be deemed obsolete, or that the continued existence of it would impede the reasonable use of the land for public or private purposes, without securing practical benefits to other persons, or would do so unless modified, or
- (b) that the persons of full age and capacity entitled to the benefit of the restrictions have agreed expressly or by implication by their acts or omissions to the restrictions being discharged or modified, or
- (c) that the proposed discharge or modification will not injure the persons entitled to the benefit of the restriction (*m*).

No compensation is to be payable, however, in excess of any loss suffered by the person entitled to the benefit of the restriction in

(*i*) See *Russell v. Watts* (1885), 10 App. Cas. 590 ; 19 Digest 40, 215.

(*k*) *Wilkes v. Spooner*, [1911] 2 K. B. 473 ; 40 Digest 154, 1231.

(*l*) Housing Act, 1936, s. 163 ; 29 Halsbury's Statutes 671.

(*m*) Law of Property Act, 1925, s. 84 (1) ; 15 Halsbury's Statutes 260.

consequence of the discharge or modification of the restriction (*n*).
[872]

Before making any order the authority must direct such inquiries to be made of any local authority, and such notices by advertisement or otherwise to be given to the persons who appear to be entitled to the benefit of the restrictions, as the authority thinks fit (*o*).

The reference committee have power to make rules in relation to any applications to be made to the authority, and with the consent of the Treasury to prescribe fees therefor (*p*).

The authority has no power to make an order where the restrictions were imposed on the occasion of a disposition made gratuitously or for a nominal consideration for public purposes, *e.g.* restrictions imposed upon the gift of a public park (*q*).

The authority may direct by whom the costs of the application are to be paid (*r*). [873]

The order of the authority binds all persons, whether or not ascertained or parties to the proceedings, but is subject to appeal to the High Court, or the Courts of Chancery of the County Palatine of Lancaster or of the County Palatine of Durham, or to the county court (*s*) where the subject-matter does not exceed £500 (*t*). There is, however, no right of appeal from the dismissal of an application to discharge or modify covenants (*u*).

The courts referred to also have power, on the application of any person interested, to declare whether or not in any particular case any freehold or leasehold land within the limits mentioned is affected by the restrictions imposed by any instrument, or to declare what, upon the true construction of any instrument purporting to impose a restriction, is the nature and extent of the restriction thereby imposed, and whether it is enforceable, and, if so, by whom (*a*). Furthermore, where any proceedings are taken to enforce a restrictive covenant, the defendant may apply to the court for an order giving leave to apply to the authority to discharge or modify the covenant, and staying the proceedings in the meantime (*b*). [874]

(*n*) Law of Property Act, 1925, s. 84 (1); 15 Halsbury's Statutes 260.

(*o*) *Ibid.*, s. 3.

(*p*) *Ibid.*, s. 84 (4); 15 Halsbury Statutes 261. See the Law of Property (Restrictive Covenants Discharge and Modification) Rules, 1933, S.R. & O., 1933, No. 51, and the Law of Property (Restrictive Covenants Discharge and Modification) Fees Rules, 1933, S.R. & O., 1933, No. 52.

(*q*) Law of Property Act, 1925, s. 84 (7); 15 Halsbury's Statutes 262.

(*r*) Administration of Justice Act, 1932, s. 6; 25 Halsbury's Statutes 542.

(*s*) Law of Property Act, 1925, s. 84 (5); 15 Halsbury's Statutes 261.

(*t*) County Courts Act, 1934, s. 52 (1); 27 Halsbury's Statutes 115.

(*u*) *Re Lancaster Gate (No. 108) and Law of Property Act, 1925* [1933] Ch. 419; Digest (Supp.).

(*a*) Law of Property Act, 1925, s. 84 (2); 15 Halsbury's Statutes 261. For a recent instance of the exercise of this power, see *Re Sunnyfield*, [1932] 1 Ch. 79; Digest (Supp.).

(*b*) Law of Property Act, 1925, s. 84 (9); 15 Halsbury's Statutes 262.

RETREATS

See INEBRIATES, INSTITUTIONS FOR.

RETURNING OFFICER

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INTRODUCTION

Function.—The expression “returning officer” means a person, under whatever designation, who presides at an election (*a*), and the function of the returning officer is to do all such acts and things as may be necessary for the effectual conduct thereof (*b*).

The returning officer must maintain scrupulous fairness and impartiality in the conduct of the election. Neither the returning officer nor his partner or clerk may act as polling or counting agent in connection with the election, on pain of being guilty of a misdemeanor (*c*). A candidate for election cannot act as returning officer at his own election, inasmuch as he cannot return himself (*d*). [375]

Liabilities.—A municipal election may be wholly avoided by such general corruption, bribery, treating or intimidation at the election as would avoid a parliamentary election (*e*); and where a municipal election is questioned by petition, any returning officer of whose conduct the petition complains may be made a respondent to the petition (*f*). For failure to conduct, or take part in, or declare the result of, an election, or to convene a parish meeting for the purpose of the election of parish councillors, the returning officer is liable on summary conviction to a fine not exceeding £100, provided information is laid within three months from the date of commission of the offence (*g*). The

(*a*) *Harmon v. Park* (1880), 6 Q. B. D. 323, C. A.; 20 Digest 183, 1596. Cf. Representation of the People Act, 1882, s. 79; 7 Halsbury's Statutes 381.

(*b*) L.G.A., 1933, Sched. II., Pt. III., para. 7 (*f*); 26 Halsbury's Statutes 481.

(*c*) *Ibid.*, para. 48; *ibid.*, 490. Cf. U.D.C. Election Rules, 1934, para. 48 (1) and (2) (S.R. & O., 1934, No. 545), and corresponding sections of R.D.C. Election Rules, 1934 (S.R. & O., 1934, No. 546), and Parish Council Election Rules, 1934 (S.R. & O., 1934, No. 1318).

(*d*) *R. v. White* (1867), L. R. 2 Q. B. 557; 20 Digest 123, 995; *R. v. Morton*, [1892] 1 Q. B. 39; 20 Digest 138, 1129.

(*e*) Municipal Corpn. Act, 1882, s. 81; 10 Halsbury's Statutes 599.

(*f*) *Ibid.*, s. 88 (2); *ibid.*, 600. See title ELECTION PETITION, Vol. V., p. 220.

(*g*) L.G.A., 1933, s. 79; 26 Halsbury's Statutes 349.

returning officer also lays himself open to an action for damages if he maliciously refuses to admit the vote of a duly qualified elector (*h*). For sundry offences in relation to election matters the penalty to which a returning officer is liable is more severe than that to which a person other than an officer of the election is liable (*i*). [876]

Proceedings.—It is the duty of the returning officer to institute proceedings against any person whom he may have reasonable cause to believe to have been guilty of the offence of personation at the election for which he acted as returning officer (*k*). The costs properly incurred by a returning officer in the institution of proceedings in connection with an election may be included in the expenses of holding the election (*l*). [877]

APPOINTMENT

Election of County Councillor.—It is the duty of the county council to appoint a person to be the county returning officer (*m*). No qualification is stipulated, but a fit and proper person, not being a minor, should be appointed. The person appointed may be a man or woman, and it is usual for the clerk of the county council to be appointed. The appointment of returning officer by a council should appear in the minutes of the meeting at which the appointment is made. If the returning officer is appointed by an individual in the circumstances indicated below, the appointment should be in writing, although a written appointment is not strictly necessary. It is also desirable for any such appointment to be reported in due converse to the local authority concerned and to be recorded in their minutes.

If, at an election of a county councillor, the office of county returning officer is vacant, or the county returning officer is for any reason unable to act, the chairman of the county council is required forthwith to appoint another person to be the county returning officer at that election (*n*). This power given to the chairman avoids, in the circumstances indicated, the necessity for convening a meeting of the county council to make the necessary appointment. [878]

At an election of a county councillor for an electoral division not co-extensive with or wholly comprised in a borough, the county returning officer is the returning officer (*o*). At an election of a county councillor for an electoral division which is co-extensive with or wholly comprised in a borough, the mayor of the borough, or some person appointed by him, is returning officer. If the office of mayor is vacant, or the mayor is for any reason unable to act and has failed to appoint a person to act in his place, the deputy mayor is the returning officer. If there is no deputy mayor, or the deputy mayor is for any reason unable to act, such alderman as the council of the borough may choose for that purpose is the returning officer (*p*).

The mayor or other person acting as returning officer under the

(*h*) *Ashby v. White* (1704), 2 Ld. Raym. 938, H. L. ; 20 Digest 105, 851 ; *Grew v. Milward* (1786), cited in 2 Stark. at p. 588.

(*i*) See L.G.A., 1933, s. 81 ; 26 Halsbury's Statutes 349.

(*k*) *Ibid.*, s. 82 (2) ; *ibid.*, 350.

(*l*) *Ibid.*, s. 83 ; *ibid.*

(*m*) *Ibid.*, s. 14 (1) ; *ibid.*, 312.

(*n*) *Ibid.*, s. 14 (1).

(*o*) *Ibid.*, s. 14 (2) ; *ibid.*

(*p*) *Ibid.*, s. 14 (3) ; *ibid.*

foregoing provisions is required, as respects the election at which he so acts, to follow the instructions of the county returning officer (*q*). [879]

Election of Borough Councillor.—At an election of councillors of a borough not divided into wards the mayor is the returning officer. If the office of mayor is vacant, or the mayor is for any reason unable to act, the deputy mayor, or, if there is no deputy mayor or he is for any reason unable to act, such alderman of the borough as the council may choose for that purpose is the returning officer (*r*).

At an election of councillors for a ward, an alderman of the borough assigned for that purpose by the council at the annual meeting is the returning officer. In the event of the number of aldermen in office at that time being less than the number of wards, there is to be assigned to the ward, or to each of the wards for which no alderman is available, a councillor, not being a councillor or local government elector for the ward, and he is the returning officer. Should the alderman or councillor so assigned die or be for any reason unable to act, the mayor may appoint another alderman or, if the number of aldermen able to act is less than the number of wards, a councillor (not being a councillor or local government elector for that ward) to be the returning officer (*s*).

Where a borough is divided into wards, the returning officer at the first election for each ward held after the division is, notwithstanding the foregoing, the mayor or a person appointed by the mayor (*t*). [880]

Election of District Councillor.—(1) Urban District.—At an election of urban district councillors the clerk of the U.D.C. is the returning officer. If at such election the office of clerk is vacant, or the clerk is for any reason unwilling or unable to act, the U.D.C., or the chairman thereof, is required forthwith to appoint another person to be the returning officer at that election.

In the case of a first election of urban district councillors for a newly constituted urban district, a person appointed in accordance with the order constituting the new urban district, or, if the order contains no provision relating to the appointment of a returning officer, a person appointed by the county council, is the returning officer (*u*). [881]

(2) Rural District.—The same provisions apply as set out under "Urban District," substituting "rural" for "urban" (*a*). [882]

Election of Parish Councillor.—The clerk of the council of the rural district in which the parish is situate is the returning officer at an election of parish councillors. If at such election the office of such clerk is vacant, or the clerk is unwilling or unable to act, the R.D.C., or the chairman thereof, is required forthwith to appoint another person to be the returning officer at such election.

Where parish councillors and any rural district councillors are to be elected on the same date and for the same area, the returning officer at the election of the rural district councillors must be the returning officer at the election of the parish councillors (*b*). [883]

Deputy Returning Officer.—The county returning officer may, by writing under his hand, at an election of a county councillor for an

(*q*) See L.G.A., 1933, s. 14 (4); 26 Halsbury's Statutes 312.

(*r*) *Ibid.*, s. 28 (1); *ibid.*, 319.

(*s*) *Ibid.*, s. 28 (2); *ibid.*

(*t*) *Ibid.*, s. 28 (3); *ibid.*

(*u*) U.D.C. Election Rules, 1934, para. 1 (1), *ante*.

(*a*) R.D.C. Election Rules, 1934, para. 1 (1), *ante*.

(*b*) Parish Council Election Rules, 1934, para. 2 (1), *ante*.

electoral division not co-extensive with or wholly comprised in a borough, appoint a fit person to be his deputy for all or any of the purposes of the election. The deputy returning officer may discharge any functions which a returning officer is authorised or required to discharge in relation to such election (c).

No provision is made for the appointment of a deputy returning officer at an election of a county councillor for an electoral division co-extensive with or wholly comprised in a borough, or at an election of councillors of a borough, but adequate provision is made for a returning officer at such an election in the event of the person who would normally hold that office being unable for any reason to act (d). [884]

The U.D.C. Election Rules, 1934 (e), provide that the returning officer at an election of urban district councillors may, by writing under his hand, appoint a fit person to be his deputy for all or any of the purposes of the election, and any functions which a returning officer is authorised or required to discharge in relation to such election may be discharged by a deputy so appointed. The deputy so appointed must follow the instructions of the returning officer (f). A similar provision is contained in the R.D.C. Election Rules, 1934 (g), and the Parish Council Election Rules, 1934 (h), with the proviso in the latter case that, where parish councillors and rural district councillors are to be elected on the same day and for the same area, the same person must be appointed deputy for corresponding purposes of the two elections (i). [885]

London. County Council Elections.—Sect. 75 (2)—(5), (7), (8), (19) and (20) of the L.G.A., 1888 (k), still applies to London. The section enables the county council to appoint a returning officer and enables the returning officer to appoint a deputy. By sect. 6 of the County Councils (Elections) Act, 1891 (l), a returning officer is not disqualified for membership of the county council by reason only of his appointment, except when he directly or indirectly receives any profit or remuneration in respect of the appointment. A returning officer neglecting or refusing to hold an election is liable to a fine (m). Part II. of the Third Schedule to the Municipal Corporations Act, 1882 (n), contains rules as to nomination at elections. The references therein to mayor and town clerk must be construed as references to the returning officer (o). [886]

Metropolitan Borough Council Elections.—The Home Secretary may make regulations as to returning officers by virtue of sects. 31 and 48 (2) (vi.) of the L.G.A., 1894 (p), and sect. 2 (5) of the London Government Act, 1899 (q). (See S.R. & O., 1931, No. 22, which lays down the duties of town clerks of boroughs as returning officers.) [887]

(c) L.G.A., 1933, s. 14 (2); 26 Halsbury's Statutes 312.

(d) *Ibid.*, ss. 14 (3), 28; *ibid.*, 312, 319.

(e) See *ante*.

(f) U.D.C. Election Rules, 1934, para. 1 (2), (3).

(g) See *ante*, para. 1 (2), (3).

(h) See *ante*.

(i) Parish Council Election Rules, 1934, para. 2 (2), (3).

(k) 10 Halsbury's Statutes 746, *et seq.*

(l) 7 Halsbury's Statutes 542.

(m) Municipal Corpn. Act, 1882, s. 75; 10 Halsbury's Statutes 598; as applied by L.G.A., 1888, s. 75; 10 Halsbury's Statutes 746.

(n) 10 Halsbury's Statutes 660.

(o) L.G.A., 1888, s. 75; 10 Halsbury's Statutes 746.

(p) 10 Halsbury's Statutes 798, 807.

(q) 11 Halsbury's Statutes 1226.

RIBBON DEVELOPMENT, RESTRICTION OF

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The following is a summary of the main provisions of the Restriction of Ribbon Development Act, 1935 (*a*). For the connection between this subject and town planning, see the title TOWN AND COUNTRY PLANNING. [388]

Standard Widths for Roads.—Where a highway authority (*b*), by resolution (*c*) approved by the Minister of Transport (*d*), adopt a standard width (*e*) for a road (*f*), it is not lawful to construct, form or lay out any means of access (*g*) to or from the road or to erect or make any building or permanent excavation, or to construct, form, or lay out, any works upon land nearer to the middle of the road than a distance equal to one-half the standard width without the consent of the authority (*h*). The Minister has powers of coercion over the authority (*i*). [889]

Building along Certain Roads.—It is not lawful to construct, form or lay out any means of access to or from, or to erect or make any building upon land within 220 feet from the middle of a road which was a classified road on May 17, 1935, or a trunk road (*k*), without the consent of the highway authority (*l*).

These restrictions may be applied by resolution of the authority, approved by the Minister, to any road (*m*). [890]

Consents.—Any consents may be given by the authority subject to such conditions as they think fit to impose. Consents to means of

(*a*) 28 Halsbury's Statutes 79.

(*b*) Not defined in the Act. See title HIGHWAY AUTHORITIES, Vol. VI., p. 343. The Minister is the authority for trunk roads, but his functions under ss. 1 and 2 of this Act are carried out by county councils (Trunk Roads Act, 1936, s. 4; 29 Halsbury's Statutes 189.)

(*c*) The resolution must be advertised before and after submission to the Minister (s. 1 (1), proviso, and Second Schedule).

(*d*) Before approval, the Minister must consider objections made to the resolution and, unless he considers it unnecessary, must hold a local inquiry (s. 1 (1), proviso).

(*e*) 60, 80, 100, 120, 140 or 160 feet (First Schedule). See also the Road Standard Widths Regulations, 1936; 29 Halsbury's Statutes 218.

(*f*) Highway repairable by the inhabitants at large (s. 24).

(*g*) Whether public or private, for vehicles or for foot-passengers, or a street (s. 24).

(*h*) S. 1 (1).

(*i*) S. 1 (4).

(*k*) Trunk Roads Act, 1936, s. 4 (2).

(*l*) S. 2 (1).

(*m*) S. 2 (2).

access must not be unreasonably withheld or made subject to unreasonable conditions. Consents to means of access for agricultural purposes must neither be withheld nor made subject to any conditions, except to secure that they shall be used only for agricultural purposes. Consents to the re-erection, alteration or extension (*n*) of a building erected before the restrictions came into force must neither be withheld nor made subject to conditions. Consents under sect. 2 to the erection of buildings must neither be unreasonably withheld nor made subject to unreasonable conditions. Consents under sect. 1 to excavations, etc., for sewers, drains, electric lines, pipes, ducts, etc., must not be withheld or made subject to any conditions save such as may be necessary for securing that the construction or improvement of a road will not be prevented or prejudicially affected (*o*). An aggrieved applicant for consent may appeal to the Minister (*p*). A highway authority's failure to notify consent within two months is deemed to be an unconditional consent (*q*). [891]

Compensation.—A person whose estate or interest in land is injuriously affected by restrictions is entitled to recover from the highway authority compensation for the injury. The Acquisition of Land (Assessment of Compensation) Act, 1919, applies. The claimant, however, must satisfy the arbitrator that proposals for the development of the land were practicable or would have been so but for the Act, and that there is a demand for such development (*r*). There are provisions for preventing the duplication of compensation where similar restrictions have been imposed by other Acts (*s*). The measure of compensation is the difference between the market value of the land as restricted and its market value without the restrictions, and there are other provisions affecting the assessment of such values (*t*). [892]

Miscellaneous.—Highway authorities are given power to fence roads which are subject to the restrictions (*u*) except so far as such fences interfere with agricultural fences or gates or any public right of way. A register must be kept of persons interested in land adjoining roads subject to restrictions who are entitled to notice of resolutions affecting the land (*a*). The authority must also keep a register of consents (*b*) and also plans of all roads subject to restrictions (*c*); and these must be made available for free inspection by interested persons and by the public respectively.

The Minister has certain overriding powers of imposing (*d*) and removing (*e*) restrictions. The highway authority has power to acquire by agreement or compulsory purchase land within 220 yards from the middle of any road, the acquisition of which is in their opinion necessary for the purposes of the construction or improvement of the road or of preventing the erection of buildings detrimental to the view from the road (*f*), but where the land is acquired by compulsory

(*n*) But see the Third Schedule for exceptions; 28 Halsbury's Statutes, 101.

(*o*) S. 7 (1).

(*p*) S. 7 (4).

(*r*) S. 9 (1) (*a*). The proposals must have been immediately practicable on the date of the claim to compensation (*Melksham U.D.C. v. Wiltshire County Council*, [1937] 4 All E. R. 142; Digest (Supp.)).

(*t*) S. 9 (4).

(*a*) S. 5.

(*c*) S. 6.

(*e*) S. 12.

(*q*) S. 7 (5).

(*s*) S. 9 (2).

(*u*) S. 4.

(*b*) S. 7 (6).

(*d*) S. 1 (4).

(*f*) S. 13 (1).

purchase the order must be submitted for confirmation by the Minister. Particulars must be furnished to the Minister of the purposes for which the land is intended to be used (*g*), and the land may not be used for any other purpose without the Minister's consent (*h*). [893]

Contraventions.—Contraventions of the Act render the offender liable to a fine of £50, and in addition the highway authority may by demolition, excavation, or otherwise reinstate the land in its previous condition and recover the cost from the offender (*i*). If the latter course is adopted, 28 days' notice must, unless the contravention has been established by legal decision, be given to the alleged offender; and the highway authority may be required to establish the contravention in a court of summary jurisdiction, subject to the right of either party to appeal to quarter sessions. [894]

(*g*) S. 13 (3) (b); 28 Halsbury's Statutes, 92.

(*h*) S. 13 (3) (c).

(*i*) S. 11.

RIFLE RANGES

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See also titles :

HIGHWAY NUISANCES ;
MILITARY LANDS ;

NUISANCES ;
SHOOTING GALLERIES.

Provision by County and Borough Councils for Military Purposes.—

Under the Military Lands Acts, 1892–1903 (*a*), provision is made for the acquisition of land for military purposes, of which rifle practice is one (*b*). These Acts are not affected by Part VII. of the L.G.A., 1933 (*c*). Below will be summarised the powers of councils of counties and boroughs, under these Acts, to acquire and to lease, etc., lands for use as rifle ranges by the Territorial Army, the above Acts, originally applicable to the old Volunteer Corps, being adapted to the former under regulations made under sect. 4 of the Territorial and Reserve Forces Act, 1907 (*d*).

Under the Military Lands Act, 1892, sect. 1 (3) (*e*), apart from the power given to a Secretary of State and Volunteer Corps to purchase land for military purposes, councils of counties and boroughs are enabled, at the request of one or more volunteer corps, to purchase and hold lands for military purposes. The purchase is to be effected under

(*a*) 17 Halsbury's Statutes 574, 597, 599.

(*b*) Military Lands Act, 1892, s. 23; 17 Halsbury's Statutes 584.

(*c*) See Sched. VII. to that Act; 26 Halsbury's Statutes 509.

(*d*) 17 Halsbury's Statutes 280.

(*e*) *Ibid.*, 575.

the Lands Clauses Acts, subject to special provisions (sects. 2, 20). Sect. 6 permits them to borrow for the purpose of acquiring land as though this were a purpose under the P.H.A., 1875 (*f*), sect. 13 gives power to stop up or divert foot-paths (*g*), and sects. 14—17 empower the Secretary of State to make bye-laws as to the use of such lands for military purposes and for securing the safety of the public. Rights of common are not to be affected (sect. 14 (*i*)). [895]

Under the Military Lands Acts, 1900, sect. 1 (*h*), since adapted to the Territorial Army (see above), county and borough councils may lease land held under the Act of 1892, on behalf of volunteer corps, for 99 years. The Act further provides (sect. 2) that where land, the use of which can be regulated by bye-laws under the 1892 Act (see above), abuts on the sea, tidal water or shore, or where rifle practice is or can be carried on over any sea, tidal water or shore from such land, bye-laws may be made in relation to such sea, tidal water or shore, as if they were part of the land, and compensation can be paid to a person if a private right is affected; but the consent of the Board of Trade is required in the case of interference with a public right, *i.e.* any right of navigation, anchoring, grounding, fishing, bathing, walking or recreation.

Under sect. 1 of the Military Lands Act, 1903 (*i*), now applied to the Territorial Army (*k*), councils of counties and boroughs are enabled to hire land for military purposes (which includes rifle practice) at the request of one or more volunteer corps (see above), and can contribute to the expenses of another council in purchasing or hiring lands for those purposes. Lands so hired can be leased to the volunteer corps in the same way as land held by councils of a county or borough under sect. 1 (*3*) of the 1892 Act (see above). [896]

Part I. of the Territorial and Reserve Forces Act, 1907 (*l*), contains provisions relating to the formation and duties of county associations, which are concerned with the administration of the Territorial Army, apart from training, actual service and embodiment. Part of the duties of a county association consists of the provision and maintenance of rifle ranges for the Territorial Army (*m*), but they also possess the power of establishing and assisting rifle clubs (*n*). The expenditure of county associations is provided for out of money voted by Parliament for army services (*o*). [897]

Rifle Clubs.—Since May 1, 1937, rifle clubs, approved by the Secretary of State, are largely affected by the Firearms Act of 1937, which repeals, with two small exceptions, the previous Firearms Acts of 1920, 1933, 1934 and the Amendment Act of 1936. The following points should be noted. No fee is payable for the grant of a certificate to a responsible officer of a rifle club or miniature rifle club, approved by the Secretary of State, in respect of firearms or ammunition to be used solely for target practice by its members, nor on the variation or

(*f*) See now P.H.A., 1936; 29 Halsbury's Statutes, 309, and for provisions as to expenses and borrowing powers, Parts VIII. and IX. of L.G.A., 1933; 26 Halsbury's Statutes 404 *et seq.*

(*g*) See title DIVERSION AND STOPPING UP OF HIGHWAYS, Vol. V, p. 57.

(*h*) 17 Halsbury's Statutes 597.

(*i*) *Ibid.*, 599.

(*k*) S.R. & O., 1912 (No. 1184).

(*l*) 17 Halsbury's Statutes 276: Volunteer Corps were transferred to the Territorial Army by Order in Council under sect. 29 of the above 1907 Act.

(*m*) Territorial and Reserve Forces Act, 1907, s. 2 (*c*); 17 Halsbury's Statutes 279.

(*n*) *Ibid.*, s. 2 (*c*).

(*o*) *Ibid.*, s. 3.

renewal of a certificate (*p*). Members of an "approved" rifle club, etc., can, without holding a firearms certificate, possess firearms and ammunition while engaged as a member, or in connection with target practice (*q*). Persons conducting or carrying on a miniature rifle range (for a rifle club or otherwise) can, without holding a certificate, purchase and possess miniature rifles and ammunition therefor, and persons can use a rifle and ammunition at such rifle range (*r*). [898]

London.—Sect. 42 of the L.C.C. (General Powers) Act, 1935 (*s*), gives the L.C.C. and metropolitan borough councils power to provide rifle ranges in open spaces (see title OPEN SPACES). Sects. 20 and 22 of the L.C.C. (General Powers) Act, 1925 (*t*), give power to the L.C.C. to provide rifle ranges in recreation grounds (see title PUBLIC PARKS). Bye-laws which have been made for good rule and government by the L.C.C. under sect. 23 of the Municipal Corporations Act, 1882 (*u*), and sect. 16 of the L.G.A., 1888 (*a*) (now replaced by the L.C.C. (General Powers) Act, 1934, Part VI. (*b*)), include a prohibition of shooting galleries on land adjoining or near streets so as to cause obstruction or danger to the traffic of any such streets (see also London note to title FIREWORKS AND FIRE-ARMS). [899]

(*p*) Firearms Act, 1937, s. 3 (2); 30 Halsbury's Statutes 911.

(*q*) *Ibid.*, s. 4 (8).

(*r*) *Ibid.*, s. 4 (9).

(*s*) 28 Halsbury's Statutes 151.

(*t*) 11 Halsbury's Statutes 1372, 1373.

(*u*) 10 Halsbury's Statutes 584.

(*a*) *Ibid.*, 698.

(*b*) 27 Halsbury's Statutes 422.

RIGHTS OF WAY

See EASEMENTS.

RINGING DOORBELLS

See OFFENSIVE BEHAVIOUR.

RIOTOUS BEHAVIOUR IN CHURCH

See OFFENSIVE BEHAVIOUR.

RIOTS

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Meaning of Riot.—A riot (*a*) is a “tumultuous disturbance of the peace by three or more persons (*b*) assembling together, without lawful authority, with an intent to assist one another against any who oppose them in the execution of some enterprise of a private nature (*c*), and who afterwards actually begin or execute the same in a violent or turbulent manner to the terror of the people.” It makes no difference whether the enterprise is a lawful or unlawful one (*d*), and it suffices if one person only, of reasonable courage, is actually put in fear.

A sudden quarrel and fight on some lawful occasion is not a riot but an affray, but if the participants, when the dispute has arisen, form sides, promise mutual assistance and then make an affray, they are guilty of rioting.

Again, where persons are gathered innocently, and a proposal is suddenly made to go in a body and commit an act of violence or destruction, and if there is agreement and the act is carried out, this is a riot (*e*). But where persons come together with the object of enforcing an alleged claim of right (*e.g.*, the removal of an obstruction on a public highway, etc.) this is not a riot if the number of persons is not excessive and the threats or violence used are no more than necessary for the purpose (*f*).

Rioting is a misdemeanor at common law and is punishable by fine or imprisonment with or without hard labour, or both (*g*). [900]

Reading the Riot Act.—When twelve or more persons “unlawfully, riotously and tumultuously” assemble to disturb the public peace, then it becomes the duty of the justices of the peace, or the sheriff or under-sheriff of the county, or the mayor or bailiff or other head officer, or justices of any city or town in which the assembly takes place, to repair to the scene of the disturbance and make the proclamation prescribed in sect. 2 of the Riot Act, 1714 (*h*), ordering the disturbers to disperse. If more than twelve persons unlawfully, riotously and tumultuously continue together for an hour after the proclamation, the Act makes them guilty of felony, the punishment for which is penal servitude for life, or imprisonment for two years with or without hard

(*a*) 9 Halsbury's Laws of England, (2nd ed.), 314.

(*b*) *R. v. Scott* (1761), 3 Burr. 1262, at p. 1264.

(*c*) See cases cited in 15 Digest, pp. 646—649.

(*d*) See *R. v. Graham and Burns* (1888), 4 T. L. R. 212; 15 Digest 644, 6847.

(*e*) See *Anon.* (1703), 6 Mod. Rep. 43; 15 Digest 650, 6947.

(*f*) See *R. v. Soley* (1707), 11 Mod. Rep. 115; 15 Digest 646, 6885, and *Clifford v. Brandon* (1809), 2 Camp. 358, 369, 370; 15 Digest 647, 6893.

(*g*) 9 Halsbury's Laws of England (2nd ed.), 315.

(*h*) 4 Halsbury's Statutes 340; see *ibid.*, s. 1.

labour (*i*). The same penalty can be imposed upon persons knowingly hindering or opposing the proclamation (*k*). Proceedings under the Riot Act must be begun within twelve months after the offence is committed (*l*). The procedure above is popularly known as "reading the Riot Act." It should be remembered, however, that though the proclamation is not made, the common law offence of rioting, a misdemeanor, still remains (*m*).

Riotous demolition of buildings is punishable under statute (*n*), as is also the offence of riotously preventing the loading, etc., of ships (*o*). [901]

Suppression of Riots.—Private persons can lawfully assist in suppressing riots even with the use of weapons; and officers of justice can call upon the military authorities and private persons for assistance. Refusal may lead, on indictment, to fine and imprisonment (*p*). Under an old statute (*q*) justices of the peace and sheriffs, etc., are empowered to arrest rioters, and it is their duty, as well as that of constables, to do everything in their power to suppress riots (*r*). Before a justice of the peace is justified in dispersing an unlawful meeting he must have reasonable grounds for believing, and must believe that the meeting is unlawful and that if the meeting is not dispersed there will be a breach of the peace (*s*). [902]

Compensation for Damage by Riot.—Where damage to property results from rioting, it must be made good at the expense of the inhabitants of the district in which it occurs, and compensation can be recovered for buildings or property injured or destroyed or, in the case of the latter, stolen (*t*). Where claims are made, various matters must be taken into consideration, *e.g.* the claimant's conduct and any insurance money received by him. Complaints must be made to the public authority in the area, and in accordance with H.O. regulations (*u*). There is an appeal allowed by a claimant aggrieved, and any claims admitted are payable out of the police fund of the district. [903]

London.—The authorities for the payment of compensation under the Riot (Damages) Act, 1886, are, as regards the City, the Common Council, and, as regards the metropolitan police district, the receiver for the metropolitan police district (Sched. I. of the Act). A saving for these provisions is contained in sect. 93 of the L.G.A., 1888 (*a*). [904]

(*i*) Punishment of Offences Act, 1837, s. 1; 4 Halsbury's Statutes 464; Penal Servitude Acts, 1857, s. 2, and 1891, s. 1; 13 Halsbury's Statutes 310, 364.

(*k*) Riot Act, 1714, s. 5; 4 Halsbury's Statutes 342.

(*l*) *Ibid.*, s. 8.

(*m*) See *R. v. Fursey* (1833), 6 C. & P. 81; 15 Digest 644, 6856.

(*n*) See the Malicious Damage Act, 1861, ss. 11, 12; 4 Halsbury's Statutes 563, 564.

(*o*) See the Shipping Offences Act, 1793, ss. 1—8; 4 Halsbury's Statutes 388—390.

(*p*) See the cases cited in 15 Digest, pp. 648, 649, and 711.

(*q*) Stat. (1411), 13 Hen. iv., c. 7.

(*r*) See *R. v. Kennett* (1781), 5 C. & P. 282; *R. v. Pinney* (1832), 3 B. & Ad. 947; *R. v. Neale* (1839), 9 C. & P. 481, and *R. v. Graham and Burns* (1888), 4 T. L. R. 212; in 15 Digest, 649, 692a; 648, 6919; 643, 6842; 644, 6847.

(*s*) *O'Kelly v. Harvey* (1883), 15 Cox, C. C. 435; Digest (Supp.); and see *Beatty v. Gillbanks* (1882), 9 Q. B. D. 308; 15 Digest 644, 6854.

(*t*) Riot (Damages) Act, 1886; 12 Halsbury's Statutes 844.

(*u*) See S.R. & O., 1921, No. 1536.

(*a*) 10 Halsbury's Statutes 759.

RIPARIAN AUTHORITIES

See POLLUTION OF RIVERS; PORT HEALTH AUTHORITIES.

RIVERS, POLLUTION OF

See POLLUTION OF RIVERS.

ROAD AMENITIES

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See also titles :

MEMORIALS, WAR AND OTHER ;
PARKING PLACES ;
PLANTING OF TREES ;

SEATS ;
STREET LIGHTING ;
TREES AND HEDGES.

Refuges, Fences and Subways.—Sect. 39 of the P.H.A. Amendment Act, 1890 (a), an adoptive provision, permitted an urban authority to place, maintain, alter and remove in any street, being a highway repairable by the inhabitants at large, such raised paving or places of refuge, with such pillars, rails or other fences, either permanent or temporary, as they think fit, for the purpose of protecting passengers and traffic, either along the street or on the footways, from injury, danger or annoyance, or for the purpose of making the crossing of any street less dangerous to passengers. The section has been applied to rural district councils by the Rural District Councils (Urban Powers) Order, 1931 (b), subject to the consent of the county council to the exercise of any powers thereunder. A county council may also operate under these provisions (bb). [905]

Sect. 55 of the Road Traffic Act, 1930 (c), permits a U.D.C. as respects any road in their area (subject, however, as respects a county road not vested in them, to the consent of the county council) and a highway authority as respects any road vested in them, for the purpose

(a) 13 Halsbury's Statutes 839.

(b) 24 Halsbury's Statutes 262.

(bb) L.G.A., 1929, s. 30 and Sched. I, Part II; 10 Halsbury's Statutes 904, 975.

(c) 23 Halsbury's Statutes 652.

of protecting traffic along the road from danger or of making the crossing of any road less dangerous to foot passengers, to erect, light, maintain, alter and remove places of refuge in the road, and construct, light, maintain, alter, remove and temporarily close subways under the road for the use of foot passengers.

Where a road is divided into two, with traffic in each half confined to a certain direction, an order should be made specifying the route to be followed, under sect. 46 (2) of the Road Traffic Act, 1930 (*d*), as amended by sect. 29 (4) of the Road and Rail Traffic Act, 1933 (*e*). Such an order is even more necessary when a roundabout is constructed, for without it it cannot be an offence to drive by the most direct route, though such driving may in some circumstances be dangerous. It is probably an illegal obstruction of the highway to erect traffic signs requiring traffic to proceed in a certain direction unless there is an order in force.

The Minister of Transport is a highway authority for the purposes of Part II. of the Development and Road Improvement Funds Act, 1909 (*f*), which purposes include the improvement of roads. "Improvement of roads" includes the erection, lighting, maintenance, alteration and removal of places of refuge in roads, and the construction, lighting, maintenance, alteration and removal of subways under roads for the use of foot passengers (*g*). The Minister is also highway authority for trunk roads (*h*). [906]

Subways may also be constructed under the Development and Road Improvement Funds Act, 1909 (*i*). Such a subway must be a public highway: it is not necessarily a footway. Subways are "roads" within the meaning of the expression "work of public utility" in the Unemployment (Relief Works) Act, 1920 (*k*). Subways have been constructed under other statutory powers (*l*). [907]

Persons acting under statutory powers who construct works on highways must so maintain them that the public are not injured thereby (*m*). Where a person's motor car collided with a bollard on a street refuge, the light on which had gone out, it was held that the council, having erected the refuge and bollard, were under a continuing duty to keep them adequately lighted, and were liable to the motorist in respect of his injury (*n*). In this case the bollard was intended by its construction to be illuminated, but at the very least the duty of a local authority is to take all reasonable precautions to ensure the safety of people using the road (*o*).

Footbridges.—One highway may be carried over another by a bridge as an incident of the original dedication (*p*).

Where the highway authority owns the soil, there appears to be no objection to the construction of a footbridge over the road; where

(*d*) 23 Halsbury's Statutes 644.

(*e*) 26 Halsbury's Statutes 895.

(*f*) Road Traffic Act, 1930, s. 57 (1); 23 Halsbury's Statutes 652.

(*g*) *Ibid.*, s. 57 (2).

(*h*) Trunk Roads Act, 1936, s. 1; 29 Halsbury's Statutes 185.

(*i*) See s. 8 (5); 9 Halsbury's Statutes 212.

(*k*) S. 5; 20 Halsbury's Statutes 655.

(*l*) *Westminster Corpn. v. L. & N.W. Rail Co.*, [1905] A. C. 426; 26 Digest 516, 2194.

(*m*) 16 Halsbury (2nd ed.) 363.

(*n*) *Polkinghorn v. Lambeth Borough Council*, [1938] 1 All E. R. 339; Digest (Supp.).

(*o*) *Lamley v. East Retford Corpn.* (1891), 55 J. P. 133; 26 Digest 390, 1171.

(*p*) *Reigate Corpn. v. Surrey County Council*, [1928] Ch. 359; Digest (Supp.).

they do not, the construction without the landowner's consent would be a trespass (*g*).

The local authority may grant a licence to the owner or occupier of premises abutting upon a street to construct a bridge over the street (*r*). [908]

Shelters.—An urban authority may provide, maintain and remove in or near any street suitable erections for the use, convenience and shelter of drivers of hackney carriages and such other persons as the authority permit to use them. Regulations may be made for prescribing the terms and conditions and the fees (if any) for the use of shelters, and bye-laws may be made for regulating the conduct of persons using the shelters (*s*). Rural district councils may exercise these powers with the consent of the county council (*t*); county councils may exercise them in respect of county roads (*u*). [909]

Grass Verges and Footpaths.—The Minister of Transport and any county council or other highway authority has power to cause trees or shrubs to be planted and grass margins to be laid out in any highway maintainable by him or them respectively; and to erect and maintain guards or fences and otherwise to do anything expedient for the maintenance or protection of such trees, shrubs and grass margins (*a*). The reasonable use of the highway must not be hindered and no nuisance or injury must be caused to the owner or occupier of any land or premises adjacent to the highway (*b*). The powers may be exercised upon any land vested in the authority and forming part of the highway (*c*), or upon land acquired for road purposes under sect. 13 of the Restriction of Ribbon Development Act, 1935 (*d*), even though it does not form part of the highway. Expenses incurred by district councils in connection with county roads maintained and repaired by them are not to be treated as costs towards which the county council are required to contribute, unless the latter consent (*e*). Damage caused by the exercise of these powers may be the subject of compensation (*f*). The planting, laying out, maintenance and protection of trees, shrubs and grass margins in and beside roads are included in the expression "improvement of roads" for the purposes of Part II. of the Development and Road Improvement Funds Act, 1909 (*g*), and may therefore be the subject of a grant from the Road Fund (*h*).

Highway authorities are under a duty to provide, wherever they deem it necessary or desirable for the safety or accommodation of foot-passengers, proper and sufficient footpaths by the side of roads under their control, and to provide, wherever they deem it necessary or desirable

(*g*) *Wandsworth Board of Works v. United Telephone Co.* (1884), 13 Q. B. D. 904; 26 Digest 328, 607.

(*r*) P.H.A., 1925, s. 27 (1); 13 Halsbury's Statutes 1124.

(*s*) P.H.A. Amendment Act, 1890, s. 40; *ibid.*, 839.

(*t*) Rural District Councils (Urban Powers) Order, 1931 (S.R. & O., 1931, No. 580); 24 Halsbury's Statutes 262.

(*u*) L.G.A., 1929, ss. 30, 31, and First Schedule, Parts II, V.

(*a*) Roads Improvement Act, 1925, s. 1 (1); 9 Halsbury's Statutes 219.

(*b*) *Ibid.*, s. 1 (2).

(*c*) *Ibid.*, s. 1 (3).

(*d*) 28 Halsbury's Statutes 91.

(*e*) Roads Improvement Act, 1925, s. 1 (4); 9 Halsbury's Statutes 220; L.G.A., 1929, ss. 29 (1), 132 (2), Tenth Schedule, para. 2; 10 Halsbury's Statutes 903, 970, 995.

(*f*) Roads Improvement Act, 1925, s. 1 (5); 9 Halsbury's Statutes 220.

(*g*) 9 Halsbury's Statutes 212.

(*h*) Roads Improvement Act, 1925, s. 2; 9 Halsbury's Statutes 220.

for the safety or accommodation of ridden horses and driven livestock, adequate grass or other margins by the side of the roads under their control (*i*). [910]

Signposts.—A highway authority (*k*) may, and if so directed by justices in special or petty sessions must, erect direction posts or stones where two or more ways meet, giving in large legible letters, at least an inch high, the name of the next market town, village or place, on each of such ways (*l*). The duty extends to footways and bridleways. The placing of signposts is an "improvement" within the meaning of the Roads Improvement Act, 1925 (*m*). [911]

Milestones.—A highway authority may set up, maintain and replace milestones on any highway (*n*). This also is an "improvement" within the Act of 1925. [912]

Floodposts.—If any part of a highway is subject to deep or dangerous floods, the highway authority must erect such graduated stones or posts as they consider necessary to guide passengers through the floods (*o*). [913]

Boundary Posts.—A highway authority may, and if so directed by justices in special or petty sessions must, erect stones or posts to mark the boundaries of a highway, such posts or stones bearing the name of the parish wherein they are situate (*p*). [914]

Traffic Signs.—Subject to directions given by the Minister of Transport, a highway authority may cause or permit traffic signs to be placed on or near any road in their area (*q*). Traffic signs must be of the prescribed size, colour, and type (*r*). [915]

Pedestrian Crossings.—Crossings for foot-passengers may be established on roads (*s*). The Minister of Transport may make regulations with respect to the precedence of vehicles and foot-passengers respectively, and generally with respect to the movement of traffic (including foot-passengers), at and in the vicinity of a crossing and with respect to the indication of the limits of a crossing by marks on the roadway or otherwise, and to the erection of traffic signs in connection therewith (*t*).

(*i*) Road Traffic Act, 1930, s. 58; 23 Halsbury's Statutes 653.

(*k*) See title HIGHWAY AUTHORITIES, Vol. VI, p. 343.

(*l*) Highway Act, 1835, s. 24; 9 Halsbury's Statutes 61.

(*m*) S. 2; 9 Halsbury's Statutes 220.

(*n*) Highway Rate Assessment and Expenditure Act, 1882, s. 6; 9 Halsbury's Statutes 189.

(*o*) Highway Act, 1835, s. 24; 9 Halsbury's Statutes 61.

(*p*) *Ibid.*

(*q*) Road Traffic Act, 1930, s. 48; 23 Halsbury's Statutes 646, as amended by the Road Traffic Act, 1934, s. 40 and the Third Schedule; 27 Halsbury's Statutes 563, 568. See title ROAD SIGNS AND TRAFFIC SIGNALS, p. 419, *post*. A highway authority is liable for non-feasance in the matter of repair of traffic studs and traffic signs (*Skilton v. Epsom and Exell U.D.C.*, [1937] 1 K. B. 112; [1936] 2 All E. R. 50; Digest (Supp.).

(*r*) See the Traffic Signs (Size, Colour and Type) Provisional Regulations, December 22, 1933. See also the Authorisation of Traffic Signs and Directions issued by the Minister of Transport, July 27, 1935; the Traffic Signs (Speed Limit) Provisional Regulations, January 4, 1935, and May 20, 1935. As to the liability of drivers of vehicles toward foot-passengers on crossings see (*Bailey v. Geddes*, [1938] 1 K. B. 156; [1937] 3 All E. R. 671, C. A.; Digest (Supp.) and *Chisholm v. L.P.T.B.*, [1938] 4 All E. R. 850; Digest (Supp.).

(*s*) Road Traffic Act, 1934, s. 18; 27 Halsbury's Statutes 549.

(*t*) *Ibid.*, s. 18 (2). See the Traffic Signs (Pedestrian Crossings) (No. 2) Provisional Regulations, November 7, 1934, January 11, 1935; the Pedestrian Crossings (London Traffic Area) Adaptation Order, 1935 (S.R. & O., 1935, No. 623); 28 Halsbury's Statutes 402.

Pedestrian crossings cannot be laid down without consent of the Minister (*u*). Schemes may be approved, with or without modification, by the Minister, or varied from time to time or revoked by a subsequent scheme submitted and approved, or by an order of the Minister after the council has been given the opportunity of making representations (*a*). When the scheme is approved the council is under a duty of executing the work, and the Minister has power to do so in default of the council (*b*). [916]

Fences for the Protection of Pedestrians.—Where sect. 30 (1) of the P.H.A. Amendment Act, 1907 (*c*), is in force, if in any situation fronting, adjoining or abutting on any street or public footpath, any building, wall, fence, steps, structure or other thing, or any well, excavation, reservoir, pond, stream, dam or bank is, for want of sufficient repair, protection, or inclosure dangerous to persons lawfully using the street or footpath, the authority may, by notice in writing, require the owner to repair, remove, protect or inclose the same within a specified time so as to prevent danger therefrom. In default the authority may do the work themselves.

Where sect. 31 of the same Act is in force, if any land not forming part of a common and adjoining any street is allowed to remain unfenced or with fences out of repair, and such land is therefore a danger to passengers, the Minister of Health may by order, on the application of the authority, empower them to require the owner of the land by notice in writing to fence it, or repair the fences, within fourteen days, and in default to execute the work themselves. [917]

Urban and rural district councils may place and retain in streets which are vested in them fences and posts for the safety of foot-passengers (*d*). [918]

Under sec. 6 of the Highway Rate Assessment and Expenditure Act, 1882 (*e*) fencing by posts and rails or otherwise where such fencing is required for the protection of persons travelling on the highway against danger, is a lawful charge on the highway rate. See p. 385 *ante*, for powers under the P.H.A. Amendment Act, 1890. [919]

In urban districts where sect. 52 of the Towns Improvement Clauses Act, 1847 (*f*), is in force the authority must place and maintain such fences and posts on the side of the footways of public highways as may be needed for the protection of passengers. [920]

(*u*) Road Traffic Act, 1934, s. 18 ; 27 Halsbury's Statutes 549.

(*a*) *Ibid.*, s. 18 (5), (6).

(*b*) *Ibid.*, s. 18 (7).

(*c*) 13 Halsbury's Statutes 925.

(*d*) P.H.A., 1875, s. 149 ; 13 Halsbury's Statutes 685.

(*e*) 9 Halsbury's Statutes 189.

(*f*) *Ibid.*, 547.

ROAD FUND

See ROAD GRANTS.

ROAD GRANTS

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See also titles :

GENERAL EXCHEQUER GRANTS ;
GRANTS ;
HIGHWAY AUTHORITIES ;
RIBBON DEVELOPMENT ;
ROAD AMENITIES ;

ROAD TRAFFIC ;
ROADS CLASSIFICATION ;
TOWN AND COUNTRY PLANNING ;
TREES, PLANTING OF ;
TRUNK ROADS.

Introduction.—The modern system of road grants, that is, of road grants from central funds to local authorities, dates from December 3, 1909, when the Development and Road Improvement Funds Act (a) was passed. Under that Act, the Road Board, the precursor of the M. of T., was set up and given a staff, the appointments to the Board being made by the Treasury. Road operations were to be financed by means of the "Road Improvement Grant," of which the sources of revenue were the motor spirit duties and the excise duties and licences for motor cars, as provided by the Finance (1909-10) Act, 1910. The Road Board was authorised to make advances to highway authorities in respect of the construction of new roads or the improvement of existing roads, and was also authorised itself to construct and maintain new roads whenever such a course was necessary to facilitate road traffic. There was a reservation that the sum spent out of income on the construction of new roads or the acquisition of land, or in respect of loans raised for that purpose, was not to exceed in any one year one-third of the estimated receipts of the Board for that year. (A similar restriction operates in connection with the Road Fund now administered by the M. of T. (b).) The roads of Great Britain suffered from lack of attention during the Great War, and, in consequence, it became clear that highway authorities must receive regular financial assistance beyond that provided by local rates. [921]

The M. of T. Act, 1919 (c), authorised the appointment of a Minister of Transport, who, under sect. 17 of that Act, was given power to make advances out of monies provided by Parliament to any authority,

(a) 9 Halsbury's Statutes 207.

(b) Roads Act, 1920, s. 7 (4) ; 19 Halsbury's Statutes 91.

(c) 3 Halsbury's Statutes 422.

company or person, either by way of grant or by way of loan, for the construction, improvement or maintenance of roads, bridges or ferries, with the reservation that the Minister should not make an advance exceeding £1,000,000 at any one time for the purpose of any work, unless specially authorised to do so by a resolution of the House of Commons. Up to the present time, no funds have been provided by Parliament for this purpose.

The same section authorised the payment of grants of half the salary and establishment charges of the engineer or surveyor to a highway authority, subject to a condition that the appointment, retention and dismissal of the officer, and the amount of the salary and establishment charges were to be to the approval of the Minister.

Another very important provision of sect. 17 was that which empowered the Minister to classify roads; this was the beginning of the present system of classification by which the principal roads of the country are grouped into two classes, first and second, and grants in aid of both reconstruction and maintenance are issued at standard rates, which have varied from time to time, always so far in an upward direction. The Minister would appear to be the sole arbiter as to the classification of roads, and the usual method of obtaining such a classification is for the highway authority to make application, supported by traffic statistics, to the appropriate Divisional Engineer of the M. of T., and the decision then rests with the Minister. [922]

A number of Orders in Council were issued in the autumn of 1919, transferring all road powers of the 1909 Road Board and the Board of Trade to the M. of T. The question of financing road work was settled in the following year, when the Road Fund was created by the Roads Act, 1920 (d). Sect. 3 of this Act established the Road Fund and transferred to it the assets of the Roads Improvement Fund; the control of the Road Fund was, by the same section, vested in the Minister of Transport. The income from it comes mainly from the licence duties on mechanically propelled vehicles, imposed from time to time by the various Finance Acts, of which the first was the Finance Act, 1920. Other receipts of a less important character and amount are: (a) income derived from licences issued by the Traffic Commissioners under the Road Traffic Act, 1930 (e); (b) fees payable under the Road and Rail Traffic Act, 1933 (f). There are a few other minor sources of income. A detailed account of the income of the Road Fund and of its administration is issued by the M. of T. each year as a blue book under the title "Report on the Administration of the Road Fund."

The Roads Act, 1920 (g), provided that, after paying certain statutory charges and the expenses incurred by and in connection with the Roads Department of the M. of T., the funds standing to the credit of the Road Fund were to be applied by the Minister for the purposes of Part II. of the Development and Road Improvement Funds Act, 1909, as amended by the Roads Act, 1920. These purposes were grants to local authorities in respect of the construction, improvement and maintenance of roads, bridges, and ferries. [923]

The next piece of legislation to affect road grants was the Roads Improvement Act, 1925. Under sect. 1 of that Act it became permissible for highway authorities to plant and maintain roadside trees, shrubs, and grass margins, while valuable powers were conferred under sect. 4 to control the height and character of walls, fences, hedges, etc., and to restrict the erection of new buildings at crossings or bends on

(d) 19 Halsbury's Statutes 85.
(f) 26 Halsbury's Statutes 870.

(e) 23 Halsbury's Statutes 607.
(g) S. 3; 19 Halsbury's Statutes 87.

highways where it is necessary for the safety of road users that an adequate sight line be secured. Sect. 5 conferred powers on highway authorities for the prescription of building lines along roads. Sect. 2 provided that the expression "improvement of roads" should include the planting, laying out, maintenance and protection of trees, shrubs and grass margins in and beside roads, the placing on or near roads of notices, milestones and signposts, the freeing of the roads from tolls and the prescription of building lines along roads. The effect of this section was to bring all the above road works within the scope of the M. of T. grants, while sect. 4 (8) provided that the improvement of a road under sect. 4 should be deemed an improvement in respect of which the Minister was empowered to make an advance under sect. 8 of the Development and Road Improvement Funds Act, 1909, as amended by any subsequent enactment. [924]

In the same year, sects. 33 and 34 of the P.H.A., 1925, enabled county councils and other local authorities to prescribe improvement lines. The exact authority for the Minister to make grants towards the compensation arising from the prescription of improvement lines is not quite clear, but presumably, since the prescription of such a line is a step towards the improvement of the road, no special authority is needed; at any rate, it has been the regular practice of the Minister to make grants for this purpose. [925]

Sect. 85 and the Second Schedule to the L.G.A., 1929 (*h*), discontinued the classification grants in London and county boroughs, and also grants for the maintenance of unclassified roads in counties as from April 1, 1930. An amount equivalent to the discontinued Road Fund grants made during the financial year 1929-30, together with a sum of approximately three million pounds, has to be paid annually out of the Road Fund to the general Exchequer contribution to local government expenses inaugurated by the L.G.A., 1929. [926]

In 1929 the Bridges Act enabled highway authorities to make agreement, to take over, or undertake or contribute to the maintenance of bridges in private ownership (*i*). The Minister may make orders as to reconstruction, maintenance and transfer of such bridges (*k*). [927]

Sect. 57 (1) of the Road Traffic Act, 1930 (*l*), declared that the Minister was a highway authority for the purpose of Part II of the Development and Road Improvement Funds Act, 1909, and therefore advances may be made out of the Road Fund to the Minister in that capacity.

By the Road Traffic Acts of 1930 and 1934 the expression "improvement of roads" in the Development and Road Improvement Funds Act was to include the following works, *i.e.* the erection, lighting, maintenance, alteration and removal of places of refuge in roads, and the construction, lighting, maintenance, alteration and removal of footpaths and grass verges by the side of roads and subways under roads for the use of foot-passengers, and the erection, maintenance, alteration and removal of traffic signs (*m*).

Advances might be made out of the Road Fund towards the expenses incurred by any highway authority in the erection, provision, maintenance or operation of weighbridges or other machines for weighing vehicles, or towards any sum paid by a highway authority to a person in consideration of his allowing a weighbridge or any other weighing machine to be used for weighing motor vehicles or trailers.

(*h*) 10 Halsbury's Statutes 937, 979.

(*k*) S. 3.

(*m*) S. 57 (2).

(*i*) S. 3; 9 Halsbury's Statutes 269.

(*l*) 23 Halsbury's Statutes 652.

Advances might also be made out of the Road Fund towards any expenses incurred by a police authority in the provision and maintenance of vehicles or equipment for use by the police force in connection with the enforcement of the Act. [928]

In 1935 the Restriction of Ribbon Development Act conferred important powers on highway authorities, and the Minister was empowered under sect. 19 (2) (n) to make grants to highway authorities towards expenditure incurred by reason of the coming into force of restrictions under sect. 1 of the Act. The Minister has, however, no power to make grants towards expenses incurred under sect. 2 of that Act, which, as regards new buildings, places 220 feet on either side of the middle of a road to which the section applies under the control of the highway authority.

The nature of and the method of obtaining the principal grants issued by the M. of T. can most conveniently be considered under the headings of Classification Grants, Major Improvement Grants and Grants towards the improvement of Unclassified Roads. [929]

Classification Grants.—These grants are those which cover the general maintenance of the first or second class roads, including repair and reconstruction, and improvements of a minor character involving no widening of the highway. The rates of grant for Classification Grants between 1921 and 1930 were as follows :

M. of T. Circular No.	Financial Year.	Class I Roads. Per cent.	Class II, Roads. Per cent.
116	1921-22	50	25
150	1922-23	50	25
188	1923-24	50	25
196	1924-25	50	25
	1925-26	50	25
240	1926-27	50	25
269	1927-28	50	33 $\frac{1}{3}$
274	1928-29	50	33 $\frac{1}{3}$
286	1929-30	60	50

The 1929-30 rate is still in existence at the date of publication.

The Minister issues a circular each year as to the items which may be included in the classification estimates which are submitted for the Minister's approval. When this has been received, a formal grant is issued.

Separate estimates have to be submitted, and separate grants are issued in respect of :

(i.) County roads maintained directly by the county council on Forms Nos. 319 (Roads) (Class I.) and 319A (Roads) (Class II.).

(ii.) Bridges maintained directly by the county council on Forms Nos. 322 (Roads) (Class I.) and 322A (Roads) (Class II.).

(iii.) County roads "claimed" by urban district councils under sect. 32 of the L.G.A., 1929, on Forms Nos. 320 (Roads) (Class I.) and 320A (Roads) (Class II.).

(iv.) Bridges "claimed" by urban district councils under sect. 32 of the L.G.A., 1929, on Forms Nos. 320B (Roads) (Class I.) and 320C (Roads) (Class II.).

(v.) County roads delegated to urban or rural district councils under sect. 35 of the L.G.A., 1929, on Forms Nos. 321 (Roads) (Class I.) and 321A (Roads) (Class II.).

(vi.) Bridges delegated to urban and rural district councils under sect. 35 of the L.G.A., 1929, on Forms Nos. 323 (Roads) (Class I.) and 323A (Roads) (Class II.).

The grants towards both heavy and light plant are based on standard scales issued by the Minister and revised from time to time. [930]

The classification grants towards classified roads apply both to the maintenance and to the minor improvement of such roads. In Circular No. 514 (Roads) issued by the Minister of Transport, maintenance and minor improvements are defined as follows :

ROADS. (i.) "*Maintenance.*"—Resurfacing carriageway in a similar material to that in existence ; patching ; surface dressing ; gritting ; sweeping and cleansing of roads in rural areas ; repairs to surface water drainage required exclusively for the drainage of a road ; repair and renewal of kerbing, channelling and paving of footways ; maintenance and repair of fences necessary for protection of the public, and retaining walls and sea walls necessary for the support of the road ; care and replacement of trees, shrubs and grass margins ; maintenance of white lines on carriageways ; * maintenance of refuges and subways, guardposts and milestones ; maintenance of traffic signs (including lighting thereof when not in substitution for street lighting) erected in accordance with the Regulations and Directions issued by the Minister under sect. 48 of the Road Traffic Act, 1930, or otherwise specifically authorised by him under that section (other than light signals for the control of traffic, guard rails, pedestrian crossing places, and speed limit signs).

(ii.) "*Minor Improvements.*"—Resurfacing of carriageway by the substitution of an improved material for that in existence ; construction of new or strengthening of existing foundations, including new surfacing in connection therewith ; provision of new kerbing, channelling, culverts and footways, provided these works are carried out within the existing limits of the road, and the construction of new systems of surface water drainage required exclusively for the drainage of the road ; provision and planting of trees and shrubs, and the laying out of grass margins ; marking white lines on carriageways ; * provision of refuges, guardposts and milestones ; provision of traffic signs (including provision for lighting thereof when not in substitution for street lighting) erected in accordance with the Regulations and Directions issued by the Minister under sect. 48 of the Road Traffic Act, 1930, or otherwise specifically authorised by him under that section (other than light signals for the control of traffic, guard rails, pedestrian crossing places and speed limit signs).

BRIDGES.—Repair and maintenance of the bridge structure and of the retaining walls, etc., of approaches thereto ; replacement of bridge structure by reconstruction within existing limits and strength, providing the existing structure is one which, if in good repair, would be capable of carrying the standard loading prescribed by the Ministry ; † repair and maintenance of the machinery for operating opening bridges, together with the wages of the operating staff, and the cost of power.

NOTES.—*At the junction of roads of different classes, the grant payable in respect of the marking or maintenance of white lines on carriageways will be at the rate applicable to the higher class.

† Reconstruction schemes which provide for an increase in the dimensions of the existing structure, or for an increase in strength to enable the bridge to carry the standard loading prescribed by the Ministry, should not be included in the classification grant accounts, but should be made the subject of a separate application for grant as indicated in Circular No. 420 (Roads).

It will be seen that the definition "Minor Improvement" in connection with the classification grants relates to improvements carried out within the existing limits of the highway. Subject to this condition, improvements of alignments and the construction of new footpaths come within the scope of classification grants. Diversions and widenings which entail widening of the highway are the subjects of special grants, as mentioned below. A similar qualification applies to bridges. [931]

In issuing classification grants, the Minister specifically excludes certain expenditure ; this is indicated in the circulars issued from time

to time, and the latest Circular, No. 514 (Roads), gives a list of these exceptions, as follows :

1. Widening of roads or bridges ; improvement of corners, curves and gradients ; the construction of roundabouts at road junctions or central reservations in order to provide dual carriageways. (These items are eligible for special grants. See Circular No. 420 (Roads)).

2. Establishment charges.

3. Stores and depots : overhead charges.

4. Expenditure on acquisition of land or buildings or plant and tools.

5. Foul water sewers and other sanitary works, except in the case of combined foul and surface water sewers where an apportionment of the cost may be specially agreed.

6. The cost of sweeping and cleansing of roads and the cleansing and clearing of gullies in urban districts ; watering.

7. Snow clearing. Where a snowfall has caused an obstruction sufficient to bring about a temporary closing of a road to traffic, the cost of cutting a passage through the snow to enable vehicles to pass will be considered for grant purposes upon submission of full details.

8. Works for which a tramway or other undertaking is liable under statute.

9. Provision of new lamp posts or other street lighting equipment.

10. Alteration of gas, electricity or water mains, and removal of tramway posts, telegraph and telephone poles, pillar boxes, etc., unless specially approved for inclusion in a scheme for grant purposes.

11. Cost of raising loans.

12. *Ex gratia* payments to contractors.

13. Street name plates.

14. Council's contributions to superannuation funds.

15. Travelling expenses of supervisory road foremen. [932]

Major Improvement Grants.—Special grants are made towards major improvements, *i.e.* improvements which involve the appreciable widening of existing roads, or diversions or new roads.

The latest scale of grant in respect of major improvements is given in Circular No. 420 (Roads) (Revised July 1937) and issued with Circular No. 497 (Roads). See table below.

It will be observed that highway authorities are grouped in three groups, A, B, and C. This has been done to meet the difficulty which has arisen in the past of county councils and other highway authorities of low rateable value being faced with the cost of reconstructing important roads which merely ran through their areas and, to all intents and purposes, were of little value to them. The Minister has, therefore, grouped highway authorities into three groups, according to the ratio of the weighted to the actual population of their areas as determined by the formula of the L.G.A., 1929. [933]

PERCENTAGE OF APPROVED NET COST MET BY GRANT

	In built-up areas.	In areas not built-up.
1. Class I. roads :		
(a) Dual carriageways and cycle tracks :		
Group A - - - - -	66 $\frac{2}{3}$	75
Group B - - - - -	60	66 $\frac{2}{3}$
Group C - - - - -	50	60
(b) Other Improvements - - -	50	60
2. Class II. and unclassified roads - -	33 $\frac{1}{3}$	50

The reason for distinguishing between built-up areas and areas not built-up is that objection was made by many highway authorities to

the principle of making grants towards the site value only of properties acquired in built-up areas. The Minister, therefore, now makes a grant towards the whole cost of improvements in built-up areas.

Schemes have to be submitted individually for the Minister's approval, in the case of major improvement grants, and such approval must be given before the work is commenced.

To avoid duplication of work, small improvement schemes estimated to cost not more than £250 each (including the cost of the land and accommodation works) can be grouped together annually and made the subject of one grant. In such cases, the schemes must be effectively started during the financial year covered by the grant (o).

Applications for grants of less than £10 in respect of these or other improvements are not entertained by the Minister.

In the case of classification grants, the road authority submits estimates for the year, on forms supplied by the Ministry, for the whole of its classified roads and bridges, under the headings of "Maintenance" and "Minor Improvements," and the Minister makes bulk grants towards these works, subject to deductions for any of the matters towards which he will not contribute.

All the other grants are special grants, and individual application has to be made on the appropriate forms in connection with each particular improvement, with the exception of schemes under £250 in value, and unclassified road improvement grants which are referred to later, for which omnibus applications can be made.

It is a condition of all grants that all accounts, records and documents relating to the works shall be open at all times to the inspection of any properly accredited officer of the Ministry. Furthermore, as a result of such inspection, the Minister can make any adjustment of the grants or grant payable that he may consider necessary. [934]

Unclassified Roads.—The M. of T. Circular No. 234 (Roads) of March 10, 1926, indicated the issue of a grant at the rate of 20 per cent. as from April 1, 1926, towards the maintenance and improvement of what are known as "selected" unclassified roads, the selection to be approved by the Minister and his advisers.

Two years later, the rate of grant towards these "selected" unclassified roads was increased to 25 per cent. by the M. of T. Circular No. 270 (Roads).

This form of grant, *i.e.* that contributing towards the maintenance of unclassified roads, was finally extinguished on March 31, 1930, under the provisions of the L.G.A., 1929, whereby it was replaced by a portion of the general Exchequer grant to be paid to local authorities under that Act.

Grants in aid of improvements (but not maintenance) of unclassified roads, at the rate of 50 per cent. in areas not built-up and 33½ per cent. in areas built-up, can now be obtained in the case of schemes approved by the Minister. [935]

Bridges and Level Crossings.—Improvement grants for normal bridge works, as mentioned earlier, are made either as classification or as major improvement grants, but the Minister makes grants of 75 per cent. of the net cost falling upon a highway authority in respect of expenditure incurred in the reconstruction and strengthening of weak bridges in private ownership, which carry important carriage roads over or under railways, canals, rivers, etc., and for the construction of bridges in place of level crossings. The grant of 75 per cent. is

conditional upon additional liability falling upon the highway authority concerned, *i.e.* the highway authority assuming future maintenance of the bridge structure or any portion thereof added by the reconstruction scheme, and in the case of a road bridge the maintenance of the full width of the road over the bridge. The conditions under which these grants are made are laid down in the case of bridges in Circular No. 296 (Roads) of July 5, 1929, and Circular No. 315 (Roads) of March 17, 1930; and of level crossings in Circular No. 315 (Roads) of March 17, 1930, and both are referred to in Circular No. 420 (Roads) revised in July, 1937, and issued with Circular No. 497 (Roads). [936]

Traffic Signs.—These include direction and warning signs and white lines, and grants are made at the normal classification rates. In the case of "Major Road Ahead" signs, grants at the appropriate classification rates are made where such signs are erected on unclassified roads, provided that the major road ahead which is indicated is a Class I. or Class II. road (*p*).

The grants are in all cases applicable both to the erection and to the maintenance of such signs.

Separate and special grants of 60 per cent. towards the cost of installing and maintaining light signals are made by the Minister, irrespective of the class of road affected; provided prior approval has been given, and the layout satisfies the Minister (*q*).

In the case of urban districts over 20,000 in population who have "claimed" their county roads, grants are usually made direct to them, subject to the county council being consulted. [937]

Road Refuges and Subways.—Contributions are made towards these at the appropriate classification rate under M. of T. Circular No. 356 (Roads) of March 2, 1931. [938]

Pedestrian Crossing Places.—A grant of 60 per cent. is made to highway authorities (with the exception of county boroughs, corporation of London, metropolitan boroughs and large burghs in Scotland), towards approved expenditure incurred in the establishment and maintenance of approved pedestrian crossing schemes (*r*). Sect. 18 of the Road Traffic Act, 1934 (*s*), lays down the procedure for establishing such crossings, and it is important to note that the chief officer of police must be consulted. [939]

Speed Limit Signs.—A grant of 60 per cent. is made towards approved expenditure incurred on the erection and maintenance of these signs by local authorities (other than the corporation of London, the metropolitan and county boroughs and the large burghs in Scotland) (*t*). All such signs must be erected in conformity with the regulations and directions issued by the Minister under sect. 1 of the Road Traffic Act, 1934 (*u*). [940]

Weighbridges.—Grants of 60 per cent. are made in the case of portable weighing machines towards the purchase, the construction of draw-ins where vehicles can be weighed, and the cost of subsequent maintenance and operation. Where fixed weighbridges are to be used, a grant of 50 per cent. towards approved expenditure in erection will

(*p*) M. of T. Circular No. 405 (Roads) of August 31, 1934.

(*q*) Circular No. 297B (Roads) of January 30, 1930.

(*r*) M. of T. Circular No. 414 (Roads) of January 14, 1935.

(*s*) 27 Halsbury's Statutes 549.

(*t*) M. of T. Circular No. 416 (Roads) of February 5, 1935.

(*u*) 27 Halsbury's Statutes 535.

be made; but grants are not made towards the cost of maintaining and operating fixed weighbridges owned by local authorities. Expenses incurred on the hiring of weighbridges for testing purposes will also qualify for a grant of 50 per cent. M. of T. Circulars Nos. 372 (Roads) of January 7, 1932, 376 (Roads) of June 14, 1932, and 408 (Roads) of November 12, 1934, apply. [941]

Tree Planting.—The Minister will allow the cost of tree planting and maintenance to be included in estimates in connection with approved schemes of road improvement or new construction, and with existing classified roads (M. of T. Circulars Nos. 233 (Roads) of September 18, 1925, 240 (Roads) of June 28, 1926, 420 (Roads) of July 27, 1937, and subsequent annual circulars relating to classification grants). [942]

Guard Rails.—Circular No. 420 (Roads) (revised July, 1937), issued with Circular No. 497 (Roads), intimated that the Minister was prepared to make grants of 60 per cent. towards approved expenditure incurred by highway authorities on the erection of guard rails for the protection of pedestrians. In county areas he was also prepared to make grants at the same rate in respect of the maintenance of guard rails erected with his approval. [943]

Acquisition of Property. *Where Works are to be put in Hand Forthwith.*—As mentioned earlier, the distinction with regard to site value no longer exists, and in the case where property is to be or has been purchased for an improvement scheme, the grant will be payable on the net cost of the property used for highway purposes. [944]

Property required for Future Road Works.—Before the passing of the Restriction of Ribbon Development Act, 1935, it often became necessary to secure property when the opportunity arose, in order to safeguard the future. The Act has largely met this case, but the Minister is still prepared to allow authorities to put into operation sect. 9 (1) (b), and purchase land as an alternative to the payment of compensation, notwithstanding that it may not be proposed to throw the land into the highway forthwith. The decision as to whether it is more economical to pay compensation or to acquire the land forthwith will rest upon the certificate of the district valuer.

In all cases of the acquisition of property, both for immediate use and for the future, the Minister will only pay grant up to the amount of the certificate issued by the appropriate district valuer of the Board of Inland Revenue. [945]

Legal Costs in Connection with Property Acquisition.—The fees of vendors' solicitors and surveyors paid by the highway authority on the acquisition of land are accepted as grant earning, but the legal costs of the authority themselves, or fees paid by them to outside firms of solicitors, or to their own legal staff, are not eligible for grant. [946]

Town Planning.—The Minister has indicated that, where a highway authority has been able to arrange with a town planning authority for town planning procedure to be used for sterilising existing land for the future widening of existing classified roads, the Minister will consider applications for grants towards any compensation which highway authorities may be required to pay to the owner of the land affected; but this procedure has now been largely superseded by the Restriction of Ribbon Development Act, 1935 (a). [947]

Restriction of Ribbon Development Act, 1935 (b).—Where, under sect. 1 of the Act, a standard width is adopted for a road, and compensation becomes payable as a result of the refusal of consent or conditions attached to a consent under that section, such compensation is eligible for a grant at the rate appropriate to the improvement of the road, having regard to its present, or, if the standard width provides for a higher class of road, potential classification value.

Should a highway authority, with the approval of the district valuer, take advantage of the provisions of sect. 9 (1) (b), and purchase land as an alternative to the payment of compensation, consideration will be given to the making of a grant at the time of purchase, notwithstanding that it may not be proposed to throw the land into the highway forthwith.

The M. of T. have pointed out that, since the provisions of the 1935 Act are available, it should rarely be necessary for a highway authority to purchase land as contemplated in the fourth sub-paragraph of paragraph 4 of Circular No. 420 (Roads) (revised July, 1937), and the department will not normally be prepared to make grants as provided for in that sub-paragraph. [948]

Salary and Travelling Expenses of the Surveyor or Engineer to the Highway Authority and Salaries of the Surveyor's Highway Engineering and Surveying Staff.—Grants of 50 per cent. are made from the Road Fund by the Minister of Transport under sect. 17 (2) of the M. of T. Act, 1919 (c), towards the salary and travelling expenses of the engineer or surveyor. The travelling expenses of the engineer and surveyor must not exceed the maximum rate per mile laid down by the Minister, and no grant is made towards any subsistence allowances.

The salaries of the engineering staff of county councils (but not other highway authorities), so far as they are attributable to the discharge of highway duties, are, if approved by the Minister, subject to a similar grant, but their travelling expenses are not admitted for grant.

Special grants have also been made at times for special staff approved by the M. of T. and engaged in connection with major improvements.

The Minister will also make a grant of 50 per cent. towards approved expenditure: (i.) in respect of staff added to the establishment of the engineer or surveyor of the highway authority for the purpose of work (including, for instance, surveys, the preparation of plans and the collection of other data) preliminary to and necessary for the adoption of standard widths. (ii.) on travelling by such staff on such work, and (iii.) on the provision of instruments and maps required by such staff for such work; provided that estimates of expenditure are submitted for the Minister's prior approval.

It should be noted that, in the case of staff provided for the purpose of the Restriction of Ribbon Development Act, 1935 (d), not only engineering staff but clerical staff may be included, and also their travelling and the provision of instruments and maps. [949]

Trunk Roads (e).—Under sect. 9 (1) of the Trunk Roads Act, 1936 (f) all expenses incurred by the Minister with the approval of the Treasury in the maintenance, repair, or improvement of trunk roads, or in the construction of any road intended to supersede any present trunk road, and such expenses in other dealing with trunk roads as may be determined by the Minister with the consent of the Treasury, shall be defrayed

(b) 28 Halsbury's Statutes 79.

(d) 28 Halsbury's Statutes 79.

(f) 29 Halsbury's Statutes 196.

(c) 3 Halsbury's Statutes 435.

(e) See, generally, title TRUNK ROADS.

out of the Road Fund ; and all other expenses of the Minister under the Act, not being expenses in the construction of trunk roads, shall, to such amount as may be approved by the Treasury, be defrayed out of moneys provided by Parliament. The local authority who act as his agents in the maintenance, repair, improvement and construction of trunk roads, are required at the end of each financial year to supply the Minister with an account of the receipts and expenditure for that year which must be certified by the surveyor and by the accounting officer designated by the council. The account must include a sum equal to six per cent. of the expenditure incurred, to cover the administrative expenses (g) of the council for maintenance, repair and minor improvement ; five per cent. for works of new construction or major improvement when carried out by direct labour, and four per cent. when carried out by contract. The Minister will also, on the request of a council, pay the expenses in connection with the preparation of detailed drawings, plans, strip plans, specification and estimates up to two per cent. of the estimated cost of the improvement, as soon as they are completed to his satisfaction. Should the improvement be subsequently carried out, such payment has to be treated as a payment on account of the percentage addition payable on the completed works.

A county council *may* contribute towards the costs incurred by the Minister in the construction or improvement of any trunk road, improvements to the amenities of the road or of land abutting on or adjacent to the road, and a borough or U.D.C. *may* contribute towards the costs incurred by the Minister in any such construction or improvement, if it is in the nature of a town improvement (sect. 6 (8)). The Minister may make such contributions as he thinks fit towards expenditure incurred on drainage works by a drainage board where the works will benefit a trunk road (sect. 6 (9)).

Sect. 4 (1) provides that, subject to the provisions of the section, the functions of the highway authority under sect. 1 and sect. 2 of the Restriction of Ribbon Development Act, 1935, shall not be exercisable by the Minister, but shall, in relation to trunk roads, be exercisable by the county council, or where those functions were, immediately before the road became a trunk road, exercisable by some other council, by that council.

Where compensation is payable by an authority under sect. 9 of the Act of 1935 by reason of a restriction under sect. 1 or sect. 2 of that Act, the Trunk Roads Act provides (sect. 4 (5)) that the Minister shall pay to the authority such sum as represents the amount, if any, payable by the authority in consequence of any requirement made by him under this section, and any question whether any such sum is payable by the Minister, or as to the amount of any such sum, shall, in default of agreement, be determined by an official arbitrator under the Acquisition of Land (Assessment of Compensation) Act, 1919.

When a council propose to make a claim against the Minister under sect. 4 (5) of the Act, they should not agree to any compensation with the applicant without the Minister's consent. [950]

(g) The expression " administrative expenses " includes :—(i.) Salaries, wages, allowances (including travelling and subsistence allowances), insurance and superannuation charges in respect of supervisory, technical, legal, accounting, costing, clerical and other staff for whom no direct charge is included in the cost of the works ; (ii.) office accommodation and office expenses (including rent, rates, lighting, heating, cleaning, water, fuel, stationery, printing, postage, telegrams, telephones and all office equipment ; (iii.) expenditure in connection with stores, depot and roadside dumps and the provision and use of instruments).

ROAD MAKING AND IMPROVEMENT

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ACQUISITION OF LAND (OTHER THAN COMPULSORY) ;	PLANTING OF TREES ;
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INTRODUCTION

The Common Law of England knows nothing of the making and improvement of roads, though the maintenance and repair of those already made have been enforced from time immemorial. It is therefore necessary to find authority for improvement in the express terms of a statute.

The distinction between repair and improvement is not absolute. The duty to repair is a duty to make the surface suitable for the ordinary traffic of the district, and as this ordinary traffic alters in its nature from time to time, it may become necessary for the standard of repair to be altered to suit the new conditions, and an improvement of the road, in the popular sense, no doubt results. Possibly an improvement of this nature is a "reasonable improvement connected with the maintenance and repair of the road" within the meaning of sect. 33 (2) of the L.G.A., 1929 (a).

In this title the improvements to be discussed are those which are specifically authorised by Statute, and it will be necessary to consider what powers are possessed by highway authorities to improve the line or surface of roads, their powers to require improvements by owners and occupiers, their powers to acquire land, and their duty to the public during the execution of an improvement. The construction

of new roads may be regarded as an improvement—indeed it has been so treated in a Statute—but it may conveniently be considered separately. [951]

POWERS TO IMPROVE ROADS

Sect. 80 of the Highway Act, 1835 (*b*), required the surveyor of highways to make, support and maintain every public cartway leading to any market town twenty feet wide at the least, if the ground between the fences including the same would admit, and by sect. 82 (*c*), power was given to justices, if upon view it appeared to them that any highway were not of sufficient breadth, to order it to be enlarged, as they should think fit, to a width not exceeding thirty feet.

These provisions are obsolete in practice. The procedure is cumbersome, and there are restrictions as to the time of year when the powers are exercisable (*d*). They are, however, applicable to highways repairable other than by the inhabitants at large.

By sect. 47 of the Highway Act, 1864 (*e*), highway boards were authorised to make certain improvements in the highways within their jurisdiction, and by sect. 48 improvements are defined as—

- (1) The conversion of any road that has not been stoned into a stoned road.
- (2) The widening of any road, the cutting off the corners in any road where land is required to be purchased for that purpose, the levelling roads, the making any new road, and the building or enlarging bridges.
- (3) The doing of any other work in respect of highways beyond ordinary repairs essential to placing any existing highway in a proper state of repair.

These powers are now vested in county councils, but before considering the powers of the various highway authorities, it may be well to observe that further types of improvement have since been authorised. These are the improvements as defined in sect. 8 (5) of the Development and Road Improvement Funds Act, 1909, as amended (*f*).

- (4) The treatment of a road for mitigating the nuisance of dust.
- (5) Planting, laying out, maintenance and protection of trees, shrubs and grass margins in and beside roads.
- (6) The placing on and near roads of notices, milestones and signposts.
- (7) The freeing of roads from tolls.
- (8) Prescriptions of building lines along roads.
- (9) Erection, lighting, maintenance, alteration and removal of places of refuge in roads.
- (10) Construction, lighting, maintenance, alteration and removal of subways under roads for the use of foot passengers.

The Development and Road Improvement Funds Act, 1909, (as amended) authorises the Minister to make advances to highway authorities for the purpose of (*inter alia*) improvement, but the fact that such an advance is made does not authorise the execution of the improvement. It is therefore necessary to look elsewhere for these powers, and it may be convenient to discuss the powers of highway authorities to execute improvements of each of the classes mentioned above. [952]

(*b*) 9 Halsbury's Statutes 94.

(*c*) *Ibid.*

(*d*) *Vide* s. 66; 9 Halsbury's Statutes 82.

(*e*) 9 Halsbury's Statutes 158.

(*f*) *Ibid.*, 212, as amended by Roads Improvement Act, 1925, s. 2 (*ibid.*, 220), and Road Traffic Act, 1930, s. 57 (2); 23 Halsbury's Statutes 653.

Metalling Roads.—The conversion of any road that has not been stoned into a stoned road was the first of the improvements which highway boards were authorised to execute by sects. 47 and 48 of the Highway Act, 1864 (g), but it is not one of the improvements towards which advances may be made by the Minister of Transport under the Development and Road Improvement Funds Act, 1909, unless it is done for the purpose of mitigating the nuisance of dust. Unstoned roads must now be so rare that this type of improvement is of limited importance; but it is important to remember that statutory authority is required (h).

County councils as successors of highway boards have these powers, and urban authorities have a duty to cause all streets in their district, being highways repairable by the inhabitants, to be (*inter alia*) paved, metalled and flagged (i). It has been observed in the title REPAIR OF ROADS that the duty to repair may involve the "stoning" of a road, where such an improvement in the surface is required in order that the road may be fit for the ordinary traffic of the neighbourhood.

The powers possessed by highway authorities appear to be ample to justify the metalling of any repairable road as an improvement. It is not clear, however, that these powers extend to concreting. Possibly the provision of a concrete surface by an urban authority may be "paving," but it cannot, it is submitted, be regarded as the conversion of a road into a stoned road, more particularly when a stone surface already exists. The point may be of importance in relation to unclassified roads in rural districts, in respect of which the powers of county councils are those of highway boards.

Reference should be made to the title ROAD SURFACING EXPERIMENTS for the consideration of the powers of the Minister of Transport to conduct, either himself or through any authority, experiments or trials for the improvement of the construction of roads. These experiments may be made on a highway with the consent of the highway authority (k). [953]

Widening Roads.—This is perhaps the commonest form of improvement. Ignoring the functions of surveyors of highways under the Highway Act, 1835 (l), it may be noted that county councils have the powers given to highway boards by the Highway Act, 1864 (m), and that urban authorities have express powers under P.H.A., 1875, s. 154 (n).

It will be remembered that the Highway Act, 1835, which prescribed minimum widths for certain classes of highway, also prescribed a maximum width beyond which the compulsory powers of widening were not exercisable (o). Modern statutes provide no such limits, though bye-laws may impose minimum widths for new streets. The Restriction

(g) 9 Halsbury's Statutes 158—160.

(h) See *Sutcliffe v. Surveyors of Highways of Sowerby* (1859), 1 L. T. 7; 26 Digest 329, 612; *Mercer v. Woodgate* (1869), L. R. 5 Q. B. 26; 26 Digest 417, 1357; *Arnold v. Blaker* (1871), L. R. 6 Q. B. 433; 26 Digest 417, 1359; *Robertson v. Bristol Corpn.*, [1900] 2 Q. B. 198; 26 Digest 527, 2259; *Radcliffe v. Marsden U.D.C.* (1908), 72 J. P. 475; 26 Digest 353, 794.

(i) P.H.A., 1875, s. 149; 13 Halsbury's Statutes 685.

(k) Roads Improvement Act, 1925, s. 6; 9 Halsbury's Statutes 226.

(l) *Ante*, p. 402.

(m) Ss. 47, 48; 9 Halsbury's Statutes 158—160.

(n) 13 Halsbury's Statutes 688, extended to county councils by L.G.A., 1929, Sched. I; 10 Halsbury's Statutes 976, 977.

(o) *Ante*, p. 402.

of Ribbon Development Act, 1935, s. 1 (*p*), enables standard widths to be prescribed for roads and is an attempt to standardise road construction; but the Act does not prohibit the construction of roads of greater widths than those prescribed in the First Schedule and the Minister's regulations (*q*). The width of roads is thus controlled by the administrative action of the Minister, in the approval of standard widths or the making of grants, and not by operation of law.

The acquisition of land for widening presents problems of its own, which will be considered separately. [954]

Cutting off Corners.—This is in effect a form of widening and the same powers apply. In certain cases cutting off a corner results in the construction across a bend of an entirely new road, leaving the old road entirely outside the limits of the highway. The old road falls into disuse, but cannot be closed except under the statutory provisions controlling the stopping up of highways. It may, indeed, still be necessary as a means of access to buildings or land. If such a portion is closed, it reverts to the owner or owners of the soil free from the public right. Highway authorities have no power to agree to an exchange of land for the purpose of straightening a road, though such a power has been conferred on some individual authorities by Local Acts. The cases cited in Pratt and Mackenzie (*r*) in support of the contrary view do not bear the interpretation suggested. [955]

Levelling Roads.—This is a most difficult subject, as the statutory provisions do not define the operations it is intended to authorise.

County councils as successors of highway boards have the power of "levelling roads" under the Highway Act, 1864, ss. 47, 48 (*s*).

Urban authorities have two distinct powers under P.H.A., 1875. By sect. 149 (*t*) they are required to cause streets being repairable highways to be (*inter alia*) "levelled." By the same section they are expressly authorised to cause the soil of any such street to be raised, lowered or altered as they think fit. These powers are not among those which are made exercisable by county councils by L.G.A. 1929 (*u*).

Urban authorities have therefore express power to alter the level of a road either by raising or lowering it, and are no doubt liable, if access to adjoining land and premises is thereby impeded, to pay compensation under sect. 308 of the P.H.A., 1875 (*a*). But as sect. 149 refers separately to levelling and to alterations in level, it appears that the powers of a county council of levelling roads do not extend to alterations in level. There is no express authority on this point, and no doubt the next Highway Act will remove the existing doubt, but it is submitted that by the common law the public must take the highway as they find it, and no highway authority may lawfully alter a road except upon express statutory authority.

In *East Fremantle Corporation v. Annois* (*b*), the Privy Council considered a similar problem on appeal from the Supreme Court of Western

(*p*) 28 Halsbury's Statutes 81.

(*q*) S.R. & O., 1936, No. 161; 29 Halsbury's Statutes 218.

(*r*) 18th ed., pp. 44, 45.

(*s*) 9 Halsbury's Statutes 158—160.

(*t*) 13 Halsbury's Statutes 685.

(*u*) S. 31 and Sched. I.; 10 Halsbury's Statutes 905, 975.

(*a*) *Pearsall v. Brierley Hill Local Board* (1883), 11 Q. B. D. 735; 26 Digest 336, 665.

(*b*) [1902] A. C. 213; 26 Digest 455, 1711.

Australia. An Act of 1895 authorised the council of a municipality to "make, alter, level, grade . . . repair . . . and otherwise improve all public . . . streets thoroughfares and other premises within the municipality . . .". Under this power a street was altered, and the gradient improved opposite the plaintiff's house, so that the house was left on the edge of a cutting with a drop of about six or eight feet to the road.

The judgment in this case does not indicate whether the operation was to be justified as altering, levelling, grading or otherwise improving, and it is submitted that it is most appropriately regarded as "grading," and that the case is not an authority in support of the proposition that an alteration in the level of a road is levelling. [956]

Prevention of Dust.—This is one of the improvements referred to in sect. 8 of the Development and Road Improvement Funds Act, 1909 (c).

Express authority to treat roads for this purpose does not exist, but it is no doubt "the doing of any other work in respect of highways beyond ordinary repairs essential to placing any existing highway in a proper state of repair" (d).

In *Dell v. Chesham U.D.C.* (e), it was held that a highway authority had power to tar spray a road to deal with a dust nuisance, prejudicial to the public comfort. In this case damages were awarded for injury to the plaintiff's watercress beds, it not being a necessary consequence of the tar spraying that water charged with noxious acids should be discharged from the road into the watercress beds.

The surfacing of a road with any material which will prevent dust is lawful under these powers, and the necessary, but only the necessary, consequences must be accepted.

It is difficult to say to what operations, other than mitigation of the nuisance of dust, the language of the Highway Act, 1864, as to work in addition to ordinary repairs is applicable. [957]

Planting, etc., of Trees.—This subject is dealt with in the title PLANTING OF TREES. Regarded as an improvement, the planting of trees was authorised by sect. 1 of the Roads Improvement Act, 1925 (f), and by sect. 2 (g) the planting, maintenance and protection of trees was added to the meaning of the expression "improvement of roads" in the Development and Road Improvement Funds Act, 1909. [958]

Notices, Milestones and Signposts (h).—The placing on roads of notices, milestones and signposts was also added to the meaning of the expression "improvement of roads" in the Development and Road Improvement Funds Act, 1909, by sect. 2 of the Roads Improvement Act, 1925. By sect. 24 of the Highway Act, 1835 (i), it is the duty of the surveyor (now highway authority), except in parishes wholly or partly within three miles of the General Post Office in London, to fix, where two ways meet, stones or posts containing the name of the next market town, village or other place to which the ways lead. This is an absolute duty and extends to footways and bridleways as well as to carriageways.

(c) 9 Halsbury's Statutes 212.

(d) Highway Act, 1864, s. 48; 9 Halsbury's Statutes 160.

(e) [1921] 3 K. B. 427; 26 Digest 408, 1290.

(f) 9 Halsbury's Statutes 219.

(g) *Ibid.*, 220.

(h) See title ROAD AMENITIES, *ante*, p. 385.

(i) 9 Halsbury's Statutes 61.

The Road Traffic Act, 1930, s. 48 (*k*), and the Regulations made thereunder by the Minister of Transport regulate the placing of "traffic signs" on and near roads by highway authorities. "Traffic signs" include "direction posts." [959]

Milestones are authorised by the Highway Rate Assessment and Expenditure Act, 1882, s. 6 (*l*).

Freeing Roads from Tolls.—This was another of the subjects added to the definition of "improvement of roads" in the Development and Road Improvement Funds Act, 1909, by the Roads Improvement Act, 1925, s. 2 (*m*). The freeing of roads from tolls is authorised by the Highways and Bridges Act, 1891, s. 3 (*n*). Reference may also be made to the Annual Turnpike Acts Continuance Act, 1872, s. 15. [960]

Prescription of Building Lines along Roads.—This subject is discussed in the title BUILDING AND IMPROVEMENT LINES. As a road improvement, the prescription of building lines is authorised by the Roads Improvement Act, 1925, s. 5 (*o*), and by sect. 2 (*p*) of the same Act the prescription of building lines along roads is added to the operations included in the definition of "improvement of roads" in the Development and Road Improvement Funds Act, 1909. [961]

Refuges.—There are two sources of statutory authority for the construction of refuges, each of which is applicable both to county councils and urban authorities. P.H.A. Amendment Act, 1890, s. 39 (*q*), authorises urban authorities to erect refuges in highways repairable by the inhabitants. The section is in an adoptive part of the Act, but the powers are exercisable by county councils by virtue of L.G.A., 1929, without any resolution of adoption, and are extended to rural district councils (with the consent of the county council) by S.R. & O., 1931, No. 580.

The Road Traffic Act, 1930, s. 55, authorises urban authorities and highway authorities to erect and maintain places of refuge in roads.

By s. 57 (2) of the Act of 1930, the interpretation of the expression "improvement of roads" in the Development and Road Improvement Funds Act, 1909, is extended to include (*inter alia*) the erection, etc. of places of refuge. [962]

Subways.—Sects. 55 and 57 of the Road Traffic Act, 1930, apply to subways as to refuges, and under those powers subways may be made under roads for the use of foot passengers.

Sect. 8 (5) of the Development and Road Improvement Funds Act, 1909 (*r*), defines the expression "roads" for the purpose of that Act to include bridges, viaducts and subways. The Minister has power under sect. 8 (1) to make to any highway authority advances in respect of the construction of new "roads," and where such an advance is made, the Minister (*s*) may authorise the authority to construct the "road."

Clearly the construction of subways may be authorised under these powers, and subways so constructed need not necessarily be limited to the use of foot passengers. The effect of sect. 10 (2) appears to be that subways so constructed may be county roads or district roads just as surface roads may be.

(*k*) 23 Halsbury's Statutes 646.
 (*m*) *Ibid.*, 220.
 (*o*) *Ibid.*, 223.
 (*q*) 13 Halsbury's Statutes 839.
 (*s*) S. 10 (1); *ibid.*, 213.

(*l*) 9 Halsbury's Statutes 189.
 (*n*) *Ibid.*, 192.
 (*p*) *Ibid.*, 220.
 (*r*) 9 Halsbury's Statutes 212.

Sect. 11 of the Roads Improvement Act, 1925 (*t*), includes a subway in the definition of "road" for the purposes of that Act, and all the provisions of that Act therefore apply to subways as they apply to surface roads. It is not easy to understand which of the provisions of the Act are appropriate to subways. Certainly the provisions authorising the planting of trees, laying out of grass margins, prevention of obstruction to view at corners and prescription of building lines are hardly so appropriate in the present state of civilisation.

As to construction of subways by the indirect use of other powers, see *Westminster Corporation v. L. & N.W. Rail. Co. (u)*. [963]

IMPROVEMENTS BY OWNERS

Owners and occupiers of land may be compelled to execute, or to bear the cost of, improvements to roads in certain cases. The liability to make up private streets arises under P.H.A., 1875, s. 150, or the Private Street Works Act, 1892, and to execute urgent repairs, under P. H. Amendment Act, 1907, s. 19. These provisions are dealt with in the title PRIVATE STREETS and are not appropriate to this title.

Similar powers exist in relation to highways which are repairable by the inhabitants. [964]

P.H.A., 1925, s. 30.—Under this section (*a*), the local authority (*b*) have power to declare, by order, that an existing highway is a "new street" for the purpose of the application thereto of their bye-laws with respect to new streets, or of provisions in Local Acts with respect to the width of new streets. Such bye-laws are made under P.H.A., 1875, s. 157 (*c*), and under that Act and bye-laws made thereunder, an existing highway may become a new street within the meaning of the Act. The law was extended by the adoptive provisions of P.H.A. Amendment Acts, 1890 and 1907, but the elements of uncertainty are removed by the power given by P.H.A., 1925, s. 30, to make an order. Preliminary notice must be given by posting a notice at each end of the street, not less than one month before the order is made. There is a right of appeal, by any person aggrieved by such an order, to quarter sessions. For an example of such an appeal, see *Jackman v. Woking U.D.C.*, J. P. Newspaper 1932, p. 546.

When an order is made the bye-laws apply, and the building owner must comply with them. In effect a highway is thus widened to bye-law width at the expense of the developer. The section is an extremely difficult one, and it is by no means clear whether it is the whole of the bye-laws, or only those respecting width, which are brought into effect by an order, or, indeed, whether it is *intra vires* to make an order in respect of a street which is already of bye-law width. This is sometimes done in order that sect. 31 may be applied. Note that by sect. 32, when buildings are about to be erected on one side only of a street, the local authority may permit the developer to widen to a less width than the bye-laws prescribe, but the distance from the centre of the road to the new boundary must be half the bye-law width. An order under this section should be registered as a local land charge. [965]

(*t*) 9 Halsbury's Statutes 228.

(*u*) [1905] A. C. 426 ; 26 Digest 516, 2194.

(*a*) 13 Halsbury's Statutes 1126.

(*b*) Any urban authority or, in rural districts, the county council (L.G.A., 1929).

(*c*) 13 Halsbury's Statutes 689.

P.H.A., 1925, s. 31.—By this section of the same Act, where application is made to the authority to approve the plans of a new street, and such new street will in the opinion of the authority form a main thoroughfare or continuation of a main thoroughfare or means of communication between main thoroughfares in, or a continuation of a main approach or means of communication between main approaches to, their district, the authority may, as a condition of approval, require the new street to be formed of such width as they may determine. If such width exceeds the maximum bye-law width by more than twenty feet, compensation is payable in respect of that excess.

This is one of the most difficult provisions in this branch of the law, and is constantly employed for purposes which cannot have been intended. It is to be observed that the introductory words as to the opinion of the authority are words of futurity, and the better opinion therefore appears to be that the section has no application to streets which at the material date are already main thoroughfares or main approaches, etc., e.g. an ancient highway connecting two towns which does not happen to be of adequate width for modern purposes.

There is no definition of "main thoroughfare" and "main approach."

It is also almost impossible to understand what is the obligation thrown on the developer. He is required to "form" the street, whatever that may mean, and sub-sect. (3) provides that nothing in the section shall empower the local authority to require any person to defray any greater expense in the execution of any street works than would have been payable if the street had been of bye-law width. But there is nothing in the section empowering the local authority to require any person to do street works at all. [966]

Roads Improvement Act, 1925, s. 4.—Under this section (*d*), power is conferred on the Minister of Transport or any county council or other highway authority to impose restrictions with respect to any land at or near any corner or bend in a highway maintainable by him or them for the prevention of danger arising from obstruction to the view of persons using the highway. These powers may be put in force when the Minister or highway authority is of opinion that it is necessary for the purpose indicated.

The powers are exercised by the service of a notice, which may either (a) direct certain alterations to be carried out, or (b) restrain either absolutely or subject to such conditions as may be specified in the notice the person served from permitting any building, wall, fence or hedge to be erected or planted on the land.

Both these types of notice are included in the introductory part of the section, which authorises action when it is necessary to "impose restrictions."

It seems that there is no reason why a highway authority should not serve a notice in respect of a corner formed by the junction of two roads, one of which is maintainable by another authority.

A notice directing alterations may be served on the owner or occupier (*e*) of the land and may direct him to alter the height or character of any wall (not being a wall forming part of the structure of a

(*d*) 9 Halsbury's Statutes 221.

(*e*) "Owner" has the same meaning as in the P.H.A.

permanent edifice), fence or hedge thereon so as to cause it to conform with the requirements of the notice.

The Act defines "wall," "fence" and "hedge." The expression "permanent edifice . . ." is no doubt used to avoid the word "building" which has a very wide meaning in the Act, but "edifice" is not a word of precise meaning.

The effect of the words "height or character" is obscure. The meaning of "height" is of course clear, and it is submitted that, having regard to the scope of the section, a direction to alter the "character" may include the substitution of an open fence for a close-boarded one. Whether a requirement to substitute an open (or other) fence for a hedge is within the powers of the section is perhaps more doubtful.

A notice restraining the erection of a "building" upon land may not be served without the consent of the local authority for the district in which the land is situated. There is no such limitation on the service of a notice directing alterations, but building has a very wide meaning (f) in the Act, and the requirement of consent has consequently a wide application.

A notice restraining the erection of a building, etc. may be served on the "owner, occupier and lessee." As a lessee is often owner within the meaning of the P.H.A., and if not usually is the occupier, it is not clear why this word is inserted in respect of this class of notice and not in respect of a notice requiring alterations.

Sub-sect. (8) gives any person served with a notice a right of objection, and the objection may be determined by an arbitrator or by the county court (sect. 9).

Notices should be registered as local land charges. [967]

RESERVATION OF LAND FOR IMPROVEMENTS

Provision is made for the reservation of land for future improvements in various ways. It has been customary to make such provision in planning schemes under the Town and Country Planning Act, but this method has been criticised except in the case of improvements likely to be executed within a few years.

Reservation may also be effected by means of the prescription of an improvement line under P.H.A., 1925, s. 33, or a building line under the Roads Improvement Act, 1925, s. 5. These subjects are dealt with in the title BUILDING AND IMPROVEMENT LINES. The provisions of the Restriction of Ribbon Development Act, 1935, ss. 1, 2, are designed in part for the same purpose.

Land may now be purchased in advance of requirements under L.G.A., 1933, s. 158 (g). [968]

ACQUISITION OF LAND

The methods of acquiring land are dealt with in the titles ACQUISITION OF LAND (OTHER THAN COMPULSORY) and COMPULSORY PURCHASE OF LAND. For a road improvement land may be purchased by agreement or under one or other of the statutes which authorise compulsory purchase. For practical purposes these are at the present time the

(f) "Building" includes any erection of whatsoever material and in whatsoever manner constructed, and any part of a building (s. 11); 9 Halsbury's Statutes 228.

(g) 26 Halsbury's Statutes 392.

Development and Road Improvement Funds Act, 1909, s. 11 (5) (*h*), the Public Works Facilities Act, 1930, s. 2 (*i*) and the Restriction of Ribbon Development Act, 1935, s. 13 (*k*). Land not occupied by buildings may also be purchased compulsorily under P.H.A., 1925, s. 33 (8) (*l*), when an improvement line has been prescribed.

Each of these Acts gives protection to certain classes of property, and the protective provisions do not correspond. [969]

Property of Local Authorities.—Property of local authorities is not protected from acquisition under P.H.A., 1925, s. 33. It is to be noted that when the authority by whom an improvement line is prescribed are a county council, the district council must be consulted before the preparation of an improvement plan (*m*), but land may be owned by a local authority who are not the district council.

The Development and Road Improvement Funds Act, 1909, gives no protection to property of local authorities, except as regards acquisition by the Minister of land within 220 yards from the middle of a proposed road.

Under the Public Works Facilities Act, 1930, and the Restriction of Ribbon Development Act, 1935, property of local authorities is absolutely protected, except in the special case of easements for bridges over and under it. [970]

Property of Statutory Undertakers.—Under P.H.A., 1925, s. 33, property of statutory undertakers cannot be acquired except with their consent, which is not to be unreasonably withheld. Such property is not protected under the Development and Road Improvement Funds Act, 1909, except as regards acquisition by the Minister of land within 220 yards from the middle of a proposed road.

The position under the Public Works Facilities Act, 1930, and the Restriction of Ribbon Development Act, 1935, is the same as in respect of property of local authorities. [971]

Commons, Open Spaces and Allotments.—In the case of acquisition under P.H.A., 1925, s. 33, after prescription of an improvement line, no protection is given to commons, open spaces and allotments. Under the other Statutes referred to above a compulsory-purchase order is to be provisional only, unless the order provides for giving in exchange for such land other land not less in area and equally advantageous to the commoners and the public. In the case of the Development and Road Improvement Funds Act, 1909, this provision does not apply in the case of new roads or improvements in a rural district (*n*). The anomalies with which this subject abounds are perhaps nowhere so conspicuous as in the case of commons. [972]

Land in the Neighbourhood of Royal Parks and Palaces.—No special protection is given to land near Royal Parks and Palaces under P.H.A.,

(*h*) 9 Halsbury's Statutes 214.

(*i*) 23 Halsbury's Statutes 773.

(*k*) 28 Halsbury's Statutes 91.

(*l*) 13 Halsbury's Statutes 1129.

(*m*) S. 34; 13 Halsbury's Statutes 1130. S. 33 does not refer to the "preparation" of a plan, and the stage at which this consultation is to take place is, therefore, not precisely defined.

(*n*) Development and Road Improvement Funds Act, 1909, s. 19; 9 Halsbury's Statutes 216; Public Works Facilities Act, 1930, s. 2; 23 Halsbury's Statutes 773; applying (now) Housing Act, 1936, s. 143; 29 Halsbury's Statutes 663.

1925, s. 33, or under the Development and Road Improvement Funds Act, 1909. Under the Public Works Facilities Act, 1930, and the Restriction of Ribbon Development Act, 1935, notice of such acquisition must be given to the Commissioners of Works, and the confirming Minister must consider their representations (o). [973]

Ancient Monuments.—No protection is given to ancient monuments under P.H.A., 1925, s. 33, or under the Development and Road Improvement Funds Act, 1909, in respect of purchases for highway purposes (p).

Under the Public Works Facilities Act, 1930, and the Restriction of Ribbon Development Act, 1935, the site of an ancient monument cannot be acquired for the purpose of construction of a road (q). [974]

Private Parks, Gardens, etc.—No protection is given to private parks and gardens under any of the Statutes here discussed. [975]

RIGHT OF ENTRY BEFORE PURCHASE

When land is purchased compulsorily under any Act which incorporates the Lands Clauses Consolidation Act, 1845, ss. 85—90 (r), entry on the land may be made before the compensation has been agreed or determined, on compliance with the formalities prescribed by those sections. This procedure is obsolete, and modern Statutes contain express powers of entry. It is only necessary to refer to the Statutes already mentioned.

By the Public Works Facilities Act, 1930, s. 2 (2) (s), a local authority authorised by an order under the Act to purchase land compulsorily may, at any time after notice to treat has been served, after giving not less than fourteen days' notice to the owner and occupier, enter on and take possession of the whole or part of the land which they are authorised to acquire. Interest on the compensation money is payable from the date of entry.

By the Restriction of Ribbon Development Act, 1935, s. 13 (5) (t), a similar right of entry, on similar terms, is given in respect of land which a highway authority are authorised to purchase by a compulsory-purchase order made under that section.

It should be remembered that there is no right to go upon land without the consent of the occupier in order to survey the route of a proposed improvement, except after an order has been obtained applying sect. 84 of the Lands Clauses Consolidation Act, 1845, when entry may be made for taking levels, making trial holes, etc., on giving not less than three or more than fourteen days' notice. [976]

(o) Public Works Facilities Act, 1930, s. 2; 23 Halsbury's Statutes 773, applying (now) Housing Act, 1936, s. 144; 29 Halsbury's Statutes 663; Restriction of Ribbon Development Act, 1935, s. 13; 28 Halsbury's Statutes 91, applying L.G.A., 1933, s. 175; 26 Halsbury's Statutes 402.

(p) There is protection in respect of purchases by the Minister of land on either side of a proposed road, see ss. 5 (2) and 11 (5); 9 Halsbury's Statutes 211, 215.

(q) 1930 Act, s. 2, applying (now) Housing Act, 1936, s. 142; 29 Halsbury's Statutes 662; 1935 Act, s. 13 (1); 28 Halsbury's Statutes 91, applying L.G.A., 1933, s. 179 (a); 26 Halsbury's Statutes 403.

(r) 2 Halsbury's Statutes 1142—1145.

(s) 23 Halsbury's Statutes 773.

(t) 28 Halsbury's Statutes 92.

DUTY TO PUBLIC DURING IMPROVEMENT

This subject has already been discussed in the title REPAIR OF ROADS, and the law referred to in that title is generally applicable. It is important, however, to note that in the case of improvements which take the form of the construction of new roads, or the widening of existing roads, there is not necessarily any obstruction of any public right (*u*). The public have no right to go on land until it is dedicated, and a new road under construction is not dedicated.

Many improvements are not in the nature of new construction, but involve work on an existing highway. In relation to such improvements the highway authority are exercising a statutory power, and not, as in the case of repair, a statutory duty. It does not appear to have been decided that in such circumstances a highway authority have power at common law to close the highway to traffic, or even to obstruct it. Such obstruction as is reasonably necessary for the exercise of the power of improvement must, it is submitted, be lawful at common law, but the closing of a road entirely can probably not be justified except by Statute.

Closing for improvement is assumed to be lawful in sect. 4 of the London Traffic Act, 1924 (*a*), in relation to works of (*inter alia*) improvement in the London Traffic Area, and sect. 47 (1) of the Road Traffic Act, 1930 (*b*), authorises, subject to the provisions of the section, closing for the purposes of "reconstruction," a word which is not defined and which cannot include all the operations which are in law improvements of roads.

The law discussed in the title REPAIR OF ROADS as to misfeasance and non-feasance no doubt applies, but the active operations of improvement cannot be non-feasance. [977]

TRUNK ROADS

By the Trunk Roads Act, 1936 (*c*), the principal roads in Great Britain became Trunk Roads and the Minister of Transport became the highway authority. The Minister is entitled to exercise in respect of trunk roads all functions which were previously exercisable by highway authorities, but the Acts under which those functions are exercisable are modified in their application to the Minister. The law relating to trunk roads will be dealt with in a separate title, and it is sufficient to note here that the Minister has power (*d*), which he has exercised, to delegate to local authorities all or any of his powers under the Act, including those which are exercisable exclusively by the Minister. [978]

(*u*) See *Liddle v. North Riding of Yorkshire County Council* [1934] 2 K. B. 101, per SCRUTTON, L.J., at p. 112; Digest (Supp.).

(*a*) 19 Halsbury's Statutes 175.

(*b*) 23 Halsbury's Statutes 645.

(*c*) 29 Halsbury's Statutes 185.

(*d*) S. 5; 29 Halsbury's Statutes 191.

ROAD OFFICER

See TRANSFER OF OFFICERS.

ROAD PROTECTION

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BARBED WIRE ;	PLANTING OF TREES ;
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Duty of Highway Authorities.—It is the duty of highway authorities (a) to protect the highways vested in them from encroachments and all other nuisances which affect the free and convenient user of the highways by the public. The powers of highway boards as to the maintenance, repair and improvement of roads were transferred to county councils by the L.G.A., 1888 (b), which also gave them the power of preventing and removing obstructions (c). It was doubtful whether a highway board was under a duty to assert a right of the public over the alleged highway (d). District councils derive their powers and duties from the L.G.A., 1894 (e). The powers of rural district councils were not transferred to county councils by sect. 30 (1) of the L.G.A., 1929 (f), as respects rights of way and encroachments on roadside wastes. Rural district councils must protect all public rights of way, and prevent as far as possible the stopping up or obstruction of any such right of way, whether within their district or in an adjoining district in the same

(a) See title HIGHWAY AUTHORITIES, Vol. IV., p. 343.

(b) S. 11 (1) ; 10 Halsbury's Statutes 693.

(c) *Ibid.* A highway board enjoyed no such statutory powers, but it was held that such powers were included in their powers of maintenance and repair (*R. v. Heath* (1865), 6 B. & S. 578). As to removal of obstacles, see title OBSTACLES ON HIGHWAYS, Vol. IX, p. 420.

(d) See *Mill v. Hawker* (1875), L. R. 10 Exch. 92, where the court were divided on this point.

(e) S. 26 (1) ; 10 Halsbury's Statutes 795.

(f) 10 Halsbury's Statutes 904.

county, where the stoppage or obstruction thereof would in their opinion be prejudicial to the interests of their district, and prevent any unlawful encroachments on any roadside waste within their district. So far as roadside wastes are concerned the provisions of sect. 26 are merely declaratory, because roadside wastes are part of the highway in respect of which the district council in whom the highway is vested must exercise their general powers and duties of preventing nuisances (g).

For this purpose a district council may institute or defend any legal proceedings and generally take such steps as they may deem expedient (h); and this includes the right of contributing to the costs of the defence of an action brought against a private individual who has removed an obstruction in the assertion of an alleged public right of way (i). If the district council assert and threaten to exercise a public right of way over land, an action for an injunction will lie against them at the suit of the owner of the land, even though they have not yet actually taken any steps in the matter (k). [979]

Where a parish council have represented to the district council that a public right of way within their district or an adjoining district in the same county has been unlawfully stopped or obstructed, or that an unlawful encroachment has taken place on any roadside waste within their district, it is the duty of the district council, unless satisfied that the allegations of such representation are incorrect, to take proper proceedings accordingly; and if the district council refuse or fail to take any proceedings in consequence of such representation, the parish council may petition the county council for the county within which the way or waste is situate, and that council may resolve that the powers and duties of the district council shall be transferred to the county council (l).

The parish meeting of a rural parish not having a separate parish council may make the representation, and petition the county council in the same way as a district council (m). [980]

All such proceedings taken in respect of an alleged right of way are not to be deemed unauthorised merely because such right of way is not found to exist (n). [981]

Sect. 26 does not affect the powers of county councils in relation to roadside wastes, nor does it prejudice any powers exercisable by an urban sanitary authority at the time of the passing of the Act (o).

Councils of county boroughs have the additional powers conferred on district councils by the section (p).

When discharging their duties under this section the authority are in the same position as a private individual protecting his property, and they are not acting judicially. Consequently an allegation in a

(g) See titles HIGHWAY NUISANCES, and HIGHWAYS, RIGHTS OF PRIVATE PERSONS AS TO, Vol. VI.

(h) L.G.A., 1894, s. 26 (3); 10 Halsbury's Statutes 796.

(i) *R. v. Norfolk County Council*, [1901] 2 K. B. 268; 26 Digest 391, 1179. If they do no more than contribute to the costs of the person who asserted the right in question and against whom an action is subsequently brought, costs will not be given against them, if such action is successful (*ibid.*); but if they have actively interested themselves in the matter and been made co-defendants, even if before trial they are struck out as such, costs may be given against them (*Thornhill v. Weeks* (No. 3), [1915] 1 Ch. 106; 26 Digest 392, 1184).

(k) *Thornhill v. Weeks*, [1913] 1 Ch. 438; 26 Digest 391, 1180.

(l) L.G.A., 1894, s. 26 (4); 10 Halsbury's Statutes 796.

(m) *Ibid.*, s. 19 (8); *ibid.*, 791.

(n) *Ibid.*, s. 26 (5); *ibid.*, 796.

(o) *Ibid.*, s. 26 (6), (7); *ibid.*

(p) *Ibid.*, s. 26 (7); *ibid.*

statement of claim that a member of the local board had used his influence with the board for his own private interest, and that in consequence the plaintiffs had failed to induce the Board to take steps to prevent the user of a footpath for vehicular traffic, was struck out as being irrelevant, because the issue was whether or not the posts constituted an obstruction to the public right of way (*q*).

District councils seeking to establish public rights of way under these provisions do not need to join the Attorney-General as a co-plaintiff (*r*).

If in exercising their powers under this section the authority expend money in removing an obstruction to a roadside waste, they may sue for and recover the expenses of so doing from the offenders (*s*).

Acts done by the officials of the council and on their instructions to test the legality of a public right of way are done in pursuance or execution or intended execution of the Act; and the officials are, therefore, entitled to the privileges of the Public Authorities Protection Act, 1893 (*t*). [982]

By sect. 11 of the L.G.A., 1888 (*u*), county councils have the same powers as a highway board for preventing and removing obstructions, and for asserting the right of the public to the use and enjoyment of the roadside wastes of county roads vested in them; and the execution of such powers and duties is to be a general county purpose, and the costs are to be charged to the general county accounts. Under this section the county council may abate an encroachment, although the soil is not vested in them (*a*). [983]

The mere consent of a highway authority to an obstruction or encroachment upon a highway cannot legalise such obstruction or encroachment (*b*), unless they are authorised by statute to give their consent to what, without statutory powers, would be a nuisance. [984]

Gates, etc., opening on to Highway.—Sects. 71 and 72 of the Towns Improvement Clauses Act, 1847 (*c*), prohibit the opening outward of any doors, gates and bars which open upon any street. The local authority may by notice require any doors, gates and bars made so to open after the passing of the Act to be altered so as not to open on to the highway. Sect. 160 of the P.H.A., 1875 (*d*), authorises the service of notices under the Act upon the owner or occupier or upon both. Upon failure to comply with the notice, the local authority may make the necessary alterations and recover the cost from the owner, and in the case of doors, gates and bars existing before the passing of the Act, the authority may make the necessary alterations. [985]

(*q*) *Murray v. Epsom Local Board*, [1897] 1 Ch. 35; 26 Digest 391, 1177.

(*r*) *Newton Abbot R.D.C. v. Wills* (1913), 77 J. P. 333; 26 Digest 392, 1186.

(*s*) *Louth District Council v. West* (1896), 65 L. J. Q. B. 535; 26 Digest 391, 1176.

(*t*) *Greenwell v. Howell*, [1900] 1 Q. B. 535; 38 Digest 105, 751.

(*u*) 10 Halsbury's Statutes 693.

(*a*) *Harris v. Northamptonshire County Council* (1897), 61 J. P. 599; 26 Digest 449, 1656.

(*b*) *R. v. United Kingdom Electric Telegraph Co., Ltd.* (1862), 2 B. & S. 647, n.; 26 Digest 313, 452; *R. v. Train* (1862), 2 B. & S. 640; 26 Digest 419, 1387; *Harvey v. Truro Rural Council*, [1903] 2 Ch. 638; 26 Digest 313, 454; *Hawkins v. Robinson* (1872), 37 J. P. 662; 26 Digest 420, 1396; *Preston Corp'n. v. Fulkwood Local Board* (1885), 53 L. T. 718; 26 Digest 440, 1573; *Att.-Gen. v. Barker* (1900), 83 L. T. 245; 26 Digest 414, 1334. Nor will any lapse of time justify a nuisance (*Harvey v. Truro Rural District*, *supra*).

(*c*) 13 Halsbury's Statutes 553.

(*d*) *Ibid.*, 691.

Damage to Footway in Consequence of Works on Adjoining Lands.—Sect. 20 of the P.H.A. Amendment Act, 1907 (*e*), provides that where a footway of any street repairable by the inhabitants at large is damaged as the result of excavations or other works on adjoining lands, the urban authority or the county council may repair and reinstate the footway, and may recover the cost of such repair and reinstatement from the owner of the lands upon which such excavations or other works have been made, or from the person causing or responsible for the damage. This power is in addition to that conferred by sect. 149, P.H.A., 1875 (*f*). [986]

Deposit of Materials and Making of Excavations in a Street.—The deposit of building materials or the making of excavations in a street repairable by the inhabitants at large, without the previous consent of the urban authority or county council, is prohibited by sect. 29, P.H.A. Amendment Act, 1907 (*g*). A person to whom such consent is given is responsible for fencing and lighting the materials or excavation at night and compliance with any request by the authority for their removal or filling up. The powers under this section are supplemental to the provisions of sect. 81, Towns Improvement Clauses Act, 1847 (*h*), and sect. 149, P.H.A., 1875 (*i*). [987]

Crossings over Footways.—A person desiring to construct a crossing over a footway to afford a means of access for cattle, or vehicles exceeding four feet in width or two hundredweight in weight, to any premises fronting, adjoining or abutting upon any street which is repairable by the inhabitants at large, must give notice to and construct such crossing under the supervision of the urban authority or county council (sect. 18, P.H.A. Amendment Act, 1907). An owner of premises abutting upon a highway has a right of access to such highway across the footway for traffic necessary to the reasonable enjoyment of his premises, provided he does not cause a nuisance (*k*). [988]

Prevention of Soil or Rubbish Falling on Highways.—An urban authority—or a county council under sect. 30 (2) and Sched. I., Part I. of the L.G.A., 1929 (*l*), or the Minister of Transport as regards Trunk Roads (Trunk Roads Act, 1936) (*m*)—are empowered by sect. 22 of the P.H.A., 1925 (*n*), to serve notice upon the owner or occupier of any street repairable by the inhabitants at large, within their district, so to fence off, channel or embank the lands as to prevent soil or refuse from falling upon, or being washed or carried into the street, or into any sewer or gully therein, in such quantities as will obstruct the highway or choke up such sewer or gully.

Sect. 26 of the Highway Act, 1835 (*o*), imposes the obligation upon a district or county council as the highway authority to remove any

(*e*) 13 Halsbury's Statutes 918.

(*f*) *Ibid.*, 685.

(*g*) *Ibid.*, 922.

(*h*) *Ibid.*, 557.

(*i*) *Ibid.*, 685.

(*k*) *Rowley v. Tottenham U.D.C.*, [1914] A. C. 95; 26 Digest 308, 407; *St. Mary, Newington, Vestry v. Jacobs* (1871), L. R. 7 Q. B. 47; 26 Digest 325, 587; but see *Curtis v. Geeves* (1930), 143 L. T. 48; Digest (Supp.) (user not of necessity). See now also Restriction of Ribbon Development Act, 1935, s. 2; 28 Halsbury's Statutes 82.

(*l*) 10 Halsbury's Statutes 905, 974.

(*m*) 29 Halsbury's Statutes 183.

(*n*) 13 Halsbury's Statutes 1122.

(*o*) 9 Halsbury's Statutes 63.

obstruction to a highway arising from the accumulation of snow, falling down of banks or other cause; but where an owner of land abutting upon a highway fails, after notice, to remove an obstruction caused by soil washed from his land, he may be guilty of the offence of wilfully obstructing the highway (*p*). [989]

Water on Public Footways.—Sect. 74 of the Towns Improvement Clauses Act, 1847 (*q*), provides that the owner or occupier of every house or building in, adjoining, or near any street shall provide sufficient gutters and down-pipes to prevent roof water from falling on persons using the street or from flowing over footpaths. In many cases local authorities permit the construction of open or closed channels across the footway to convey water from down-pipes to the road gutter. This practice is objectionable, but is sometimes unavoidable where the wall of a building abuts directly upon the street. The only practicable alternative may be to provide a gulley in the footway on to which the down-pipe may discharge, but this is almost as objectionable. In such cases also difficulty may arise in providing down-pipes without encroaching upon the highway. Where a new building is to be erected up to the back line of the footway, the down-pipes should be fixed in chases in the wall, and an effort made to provide for the gulleys being on the premises. A useful extension of the powers of local authorities in this connection was provided by sect. 21 of the P.H.A., 1925 (*r*), under which an owner can be compelled to provide works to prevent surface water from his premises from flowing over the public footpath. [990]

Damage to Streets.—By sect. 149 of the P.H.A., 1875 (*s*), the pavement stones and other materials of a street within an urban district which is repairable by the inhabitants at large vest in and are under the control of the urban authority. A person who without the consent of the urban authority wilfully causes damage to such paving stones or other materials is liable to penalties. Where a highway is lawfully broken up an offence may be committed by failure to restore the surface to a safe condition (*t*). A highway authority, in executing works in or in connection with a highway, is required to act with reasonable regard to the safety of the public (*u*). [991]

Cellars under Streets.—Sect. 26 of the P.H.A., 1875 (*a*), prohibits the construction of any vault and/or cellar under the carriageway of any street in any urban district, without the written sanction of the urban authority. Where any vault and/or cellar is constructed without such sanction, the urban authority may alter, pull down or otherwise deal with the structure and recover the cost of so doing from the offender, who, in addition, is liable to a fine of £5, and a continuing penalty of 40s. per day. This provision appears to have been intended principally to prevent obstructions to the laying of sewers or other authorised underground works, but it is also important in relation to the safety of highways, particularly in view of the fast heavy traffic which they

(*p*) *Gully v. Smith* (1883), 12 Q. B. D. 121; 26 Digest 416, 1346.

(*q*) 13 Halsbury's Statutes 554.

(*r*) *Ibid.*, 1122.

(*s*) *Ibid.*, 685.

(*t*) *Goodson v. Sunbury Gas Consumers' Co., Ltd.* (1896), 75 L. T. 251; 26 Digest 421, 1402.

(*u*) *Oldham v. Sheffield Corpn.* (1927), 136 L. T. 681; Digest (Supp.); *Coleshill v. Manchester Corpn.*, [1928] 1 K. B. 776; Digest (Supp.).

(*a*) 13 Halsbury's Statutes 637.

now have to carry. It will be observed that the prohibition refers to the carriageway only, and not to footways. It is assumed that the consent of the authority may be subject to such conditions as they may specify. They must not, in the exercise of their powers, interfere with pipes or wires or other works other than the structure itself (b).

The obligation to provide and keep in repair coverings for entrances to cellars in any pavement or footpath is by sect. 73, Towns Improvement Clauses Act, 1847 (c), placed upon the occupier of the premises, but sect. 160 of the P.H.A., 1875 (d), authorises the authority to serve notices in respect of such matters upon the owner instead of the occupier, or upon both, and to recover the cost from the person upon whom the notice has been served. [992]

Trees Overhanging a Highway.—By sect. 64 of the Highway Act, 1835 (e), no tree may be planted within fifteen feet from the centre of the carriageway, and any such tree must be removed within twenty-one days after notice. Highway authorities were given power by sect. 65 to serve notice requiring the lopping of trees which obstruct traffic or by their shade prejudice the highway. This power is extended by sect. 23 of the P.H.A., 1925 (f), to any tree, hedge, or shrub which overhangs any street or footpath, so as to obstruct or interfere with the light from any public lamp, or to endanger or obstruct the passage of vehicles or pedestrians, or to obstruct the view of drivers of vehicles. If the owner or occupier fails to comply with the requirements of the authority within fourteen days after receipt of notice, the authority may cause the work to be done and recover the cost from the person upon whom the notice was served. The authority in exercising their powers under this section must cause no more damage than is necessary to remove the obstruction or interference. These powers apply only to trees, etc., which overhang the highway, but sect. 4 of the Roads Improvement Act, 1925 (g), authorises a highway authority to require the removal of trees, etc., which obstruct the view of drivers of vehicles near a corner or bend, although they do not overhang. [993]

(b) *Walker U.D.C. v. Wigham, Richardson & Co., Ltd.* (1901), 66 J. P. 152; 26 Digest 328, 603.

(c) 18 Halsbury's Statutes 554.

(d) *Ibid.*, 691.

(e) 9 Halsbury's Statutes 81.

(f) 18 Halsbury's Statutes 1123.

(g) 9 Halsbury's Statutes 221.

ROAD SIGNS AND TRAFFIC SIGNALS

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See also titles : ROAD AMENITIES ;
ROAD TRAFFIC.

Traffic Signs.—After the advent of the motor car and prior to the passing of the Road Traffic Act, 1930, certain powers were given to local authorities to put up traffic signs to show dangerous corners, cross roads and precipitous places. They were compelled to put up notices to show places or lengths of road in regard to which the Local Government Board had imposed a restriction of speed. Certain signs were agreed upon by local authorities and the Local Government Board did not exercise its power of standardising them, but approved the signs as to which this agreement had been made (a). The 1930 Act inaugurated a new and elaborate programme of traffic signs, and placed the administration of the system in the hands of county and urban authorities and of persons liable to repair *ratione tenuræ* (b). All of these authorities must work subject to such general or other directions as the Minister of Transport may issue (c). There is no compulsion on a highway authority to put up any traffic signs at all. They may put them up or permit others to put them up ; but if they do put them up, the signs must conform to the Minister of Transport's prescription unless the Minister approves some special sign (d). No signs may be put along roads unless they are put up as sect. 48 of the Act prescribes, except those put up under the later authority given by the Road Traffic Act, 1934. Those owners of tramways, trolleyways, docks and harbours who have got in their special Acts powers to put up signs keep those powers in spite of this general prohibition (e). [994]

The highway authority must require the owner or occupier of land on which there is a traffic sign or anything which might be mistaken for a traffic sign to remove it and, if he does not comply, they may remove the sign themselves and recover the expenses summarily as a civil debt. They may give special sanction to the retention of a sign which they are entitled thus to remove (f) ; but, if directed by the Minister, they must remove it, or cause it to be removed, failing which the Minister may remove it and recover his expenses from the

(a) Motor Car Act, 1903, s. 10 ; now repealed (see Mahaffy and Dodson's Law Relating to Motor Cars (1929), p. 129).

(b) Road Traffic Act, 1930, s. 48 (9) ; 23 Halsbury's Statutes 647.

(c) *Ibid.*, s. 48 (1).

(d) *Ibid.*, s. 48 (1), (2).

(e) *Ibid.*, s. 48 (3) ; and see the rest of the section for the following paragraph.

(f) *Ibid.*, s. 48 (4), and proviso.

authority (g). Bridge authorities must also, if the Minister so directs, remove signs sanctioned under the Motor Car Act, 1903, and the Heavy Motor Car Orders, which were repealed by the 1930 Act (h). Power to enter private land for the execution of these duties is given both to the highway authorities and the Minister (i).

Where a sign has been put up as authorised by the foregoing prescriptions of the law, and is a sign for regulating the movement of traffic or indicating the route which it must follow, any person who refuses to conform to the indication which it gives is guilty of an offence (k).

[995]

Speed Limit Signs.—The Road Traffic Act, 1934, imposed a general speed limit of thirty miles an hour in what were defined as built up areas (l). Such roads for convenience are called here "restricted" roads. The Act also permits local authorities to make orders, subject to confirmation by the Minister, imposing such speed limit on lengths of road which would not in the ordinary way be subject thereto, and conversely they can make orders, subject to the like confirmation, lifting the speed limit on roads which by virtue of the Act are subject thereto (m). These authorisations came to be known as "restricting" and "de-restricting" orders. The Act requires local authorities to put up the prescribed signs for the purpose of giving effect to any general or other directions given by the Minister. These directions indicate where a road begins, or ceases, to be "restricted" either by operation of the Act itself or by reason of a direction given under it (n). The Minister's power under sect. 48 of the 1930 Act was enlarged so as to enable him to prescribe signs for 1934 Act purposes and to give directions in regard to them. [996]

Bridges.—The Road and Rail Traffic Act, 1933 (p), authorises bridge authorities to put up signs to limit traffic over their bridges. The particular provision which enables this to be done has not, however, been brought into operation. The notices still put up by railway companies and other proprietors of privately owned bridges are authorised by it. They restrict locomotives and heavy motor cars in their use of these private bridges (r). [997]

Colour and Type of Signs.—The International Convention on Road Signals of 1926 came into force in Great Britain and Northern Ireland in October, 1930 (s), and under this convention it was agreed that certain signs, and those only, should be put up on roads to give notice of dangerous places. Some, but not all of these, are given in the Schedules to the Traffic Signs (Prescribed Size Colour and Type) Regulations, 1933 (t). These Regulations give minute directions as to the matters

(g) Road Traffic Act, 1930, s. 48 (5); 23 Halsbury's Statutes 647; and see Mahaffy and Dodson's Road Traffic Acts and Orders (1936), p. 91.

(h) *Ibid.*, s. 48 (6).

(i) *Ibid.*, s. 48 (8).

(k) *Ibid.*, s. 49.

(l) For the definition of these, see Road Traffic Act, 1934, s. 1 (1); 27 Halsbury's Statutes 535.

(m) Road Traffic Act, 1934, s. 1; 27 Halsbury's Statutes 535.

(n) *Ibid.*, s. 1 (7), (8).

(p) S. 30; 26 Halsbury's Statutes 895.

(r) See Mahaffy and Dodson's Road Traffic Acts and Orders (1936), p. 257, note (r) as to what vehicles are within the orbit of this restriction.

(s) Cmd. 3510. Treaty Series No. 11 of 1930. See the note in Mahaffy, *op. cit.*, pp. 500—501, and Mahaffy and Dodson's Traffic Rules and Orders (1931), p. 18 as to the date of effect.

(t) Provisional Rules and Orders, December 22, 1933.

named in their title, which need not be detailed here. They also make prescription as to the placing of lines or other markings in carriageways to show where vehicles must stop if a police constable or a traffic sign bids them do so, and how curves should be taken. Flashing beacons and "Stop" and "Go" signs are regulated: and so is the signification and alternation of light signals where these are permitted. It is to be noticed, however, that light signals are not "prescribed signs" within the Act and Order and find no place in the Schedule to the latter. They are put up subject to individual authorisation by the Minister. If he does authorise their installation, the sequence of the lights must always be the same and the significance of each light is fixed (*u*). The "Don't Cross" and "Cross Now" signs are described, but not prescribed; nor does their pattern appear in the Schedule. When put up they show pedestrians where and when it is "desirable" to cross a highway (*a*), but no more. [998]

Subsequently to the issue of the Regulations of 1933 the Minister authorised in 1935 the erection of the sign indicating that vehicles on a road which approaches a more important road must halt and gave "directions" as to its use (*b*). He also issued the Motor Vehicle (Direction Indicator and Stop Light) Regulations which say what these must be—if they are used by motorists, but there is no obligation to use either (*c*).

Subsequent to the coming into force of the Road Traffic Act, 1934, the Minister issued more than one set of Traffic Signs (Speed Limit) Regulations. An issue of January 4, 1935, was amended in May, 1935, and the restricting and derestricting signs rest on their authority and on that of the directions which accompanied them (*d*). A sign to enable traffic officers to stop vehicles for the purpose of being weighed was authorised in 1935 (*e*), and a sign to help children crossing the highway was authorised in 1936 (*f*). [999]

(*u*) See the important Art. 27 of the Order (Mahaffy, *op. cit.*, pp. 506–507). As to the effect of these signs on the common law of negligence, see *Joseph Eva, Ltd. v. Reeves*, [1932] 2 K. B. 393; [1938] 2 All E. R. 115; Digest (Supp.).

(*a*) *Ibid.*, Art. 30.

(*b*) Authorisation, July 27, 1935. Directions were issued on the same date.

(*c*) Mahaffy, *op. cit.*, pp. 697–699.

(*d*) Mahaffy, *op. cit.*, pp. 641–644, 675.

(*e*) It is a traffic sign within ss. 48, 49 of the 1930 Act; 23 Halsbury's Statutes 646, 647 (*Langley Cartage Co., Ltd. v. Jenks*, [1937] 2 K. B. 382; [1937] 2 All E. R. 525; Digest (Supp.)).

(*f*) Authorisation and Directions dated March 28, 1936.

ROAD SURFACING EXPERIMENTS

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Power to Conduct Experiments.—Sect. 6 of the Roads Improvement Act, 1925 (*a*), permits the Minister of Transport, either by himself or through any authority or other organisation approved by him, to conduct experiments or trials for the improvement of the construction of roads, or for testing the effect of various classes of vehicles on various

(*a*) 9 Halsbury's Statutes 226.

types of roads. He may construct necessary roads and works, erect plant, provide accommodation and, with the approval of the Treasury, incur necessary expenditure. Experiments and trials may be conducted only with the consent of the authority or person responsible for the maintenance of the highway. A person whose property is damaged by such experiments may, in the absence of contributory negligence, recover compensation from the Minister. The amount of compensation is decided by a single arbitrator, or, in default of the parties agreeing upon a single arbitrator, by the county court (b).

The Minister set up a Technical Committee on Experimental Work in 1929, and the Department of Scientific and Industrial Research set up the Road Research Board in 1933. The former body is responsible for full-scale work on the roads and the latter for work in the laboratories, especially in the Road Research Laboratory at Harmondsworth. Several engineers and others are members of both organisations, whose work, therefore, is closely co-ordinated.

In addition to the official experiments and research, many road engineers have carried out their own experiments, some of which have been observed and recorded by the M. of T. Almost all the official experiments on the roads have been carried out with the co-operation of the local authorities in whose districts the work has been done, and the invaluable assistance of their engineers.

Vehicles employed in research work need not comply with the Motor Vehicles (Construction and Use) Regulations (bb) and they are exempted from speed limits (c). [1000]

Nature of Roads now in Use.—The M. of T. recently published a return shewing how 174,078 miles of roads (about 98 per cent. of the total road mileage in Great Britain) were surfaced. This is a summary of the return :

	<i>Miles</i>
Waterbound macadam roads - -	101,214
Tarred and bituminous macadam - -	47,073
Sett-paving - - - -	5,379
Asphalt - - - -	4,440
Concrete - - - -	1,394
Wood-paving - - - -	584
	<hr/>
	160,093
Lower-grade roads - - - -	13,985
	<hr/>
Total -	174,078

No less than 107,516 miles of our roads were surface-dressed with tar or bitumen. This means that practically every waterbound road carrying an appreciable volume of traffic, and many of the roads of tarred or bituminous macadam were so treated; a surface-dressed waterbound road is efficient if the traffic is not heavy.

Important changes in the surface of British roads date from 1919, when, owing to the development of motor traffic, and war-time neglect, the roads were in poor condition. Since then, paving with stone setts has become much less general, probably the use of wood blocks has diminished, while, on the other hand, asphaltic surfaces have become

(b) Roads Improvement Act, 1925, s. 9; 9 Halsbury's Statutes 227.

(bb) Motor Vehicles (Authorisation of Special Types) Order, 1938; S. R. & O., 1938, No. 567.

(c) Motor Vehicles (Variation of Speed Limit) Regulations, 1938, S. R. & O., 1938, No. 1465.

popular for busy urban roads, and most important county roads are now surfaced with tarred or bituminous macadam. The concrete surface has also appeared, and the mileage of such roads to-day is considerably greater than that shewn in the return which has been quoted. Experiment and research have been mainly in the direction of improving existing methods, rather than of establishing new ones; the only new method which has come into common use is that of carpeting, or applying a thin veneer of tarred or bitumen-coated stones to existing road surfaces. This method is used on roads which are strong enough for the traffic they have to carry, but which, through wear and tear, or other cause, have lost their smooth-running qualities. [1001]

Lines of Research.—The following is a summary of the matters upon which research is chiefly concentrated. In investigating these matters British investigators are in touch with similar work in other countries, much of the literature of which has been translated.

Soil Physics and Foundations.—An engineer of experience may be able to judge the bearing power of the subsoil upon which his road is to be made, but at present he has no formula upon which to calculate. The moisture content and its effect are a very uncertain factor. There is little experience in the stabilisation of unsuitable subsoil. Efforts are being made to provide data upon which accurate calculations may be made. [1002]

Aggregates.—The effect of using a certain proportion of binder, whether it be tar, bitumen or cement, differs according to the weight (specific gravity), shape and porosity of the stones, or perhaps their moisture content. Much research and many experiments are in hand to provide data on this subject. [1003]

Binders (Tars and Bitumens).—These materials come from various sources; a crude tar produced in coke ovens differs from that coming from a gas works; a residual bitumen is not the same as the Lake asphalt from Trinidad. Research and experiments are designed to help in the adjustment of such differences, so that the engineer may make the best use of similar materials of different origin. [1004]

Cement and Concrete.—A slight variation in the cement/water ratio of the concrete may make a great difference to the strength. Again, the proper proportion of water is affected by the moisture contained in the aggregate. Changes in our temperature have an effect on the concrete slabs with which a road is made. The slabs may expand or contract, causing fracture. Therefore the slab must be designed (possibly reinforced) to resist the strains caused by atmospheric changes, as well as those arising from the load to be carried. The slabs must be jointed so as to reduce movement between slab and slab, but with sufficient allowance for such movement as is due to expansion and contraction. What are the best dimensions for a slab? What is the minimum number of joints to be provided without unduly limiting the provision for expansion and contraction, or in other words, what are the maximum efficient dimensions of a slab? These are some of the intricate questions to be answered, and often before a major point can be settled, many minor points arise and have to be dealt with.

Recently methods of laying and consolidating the concrete by means of machinery have been introduced. In this country those methods are in their infancy, though great use has been made of them in Germany. Investigations and tests are now in hand to determine the advantages, and possibly the disadvantages, of the new methods. [1005]

Carpets and Surface Dressings.—Although large areas of carpet

have been used, so far no standard is applicable to this work. The Ministry and the local authorities have collaborated in laying a large number of trial lengths, with various aggregates and binders, the aggregates varying not only as to character, but also in their grading, a point which is of particular importance in this class of work.

Probably carpets are attracting more interest on the part of road engineers than any other new method of road repair, and from the point of view of economy as well as of efficiency, it is desirable that reliable standards should be set up. The process of surface dressing having been in use for about thirty years, it may be asked why, after so long a time, should experiment and research be necessary? As a considerable proportion of the total cost of road maintenance is spent on surface-dressing (in some areas from a quarter to one-third) it is important that the work should be carried out efficiently. It is, however, found that materials which give satisfactory results in one case fail to do so in another. Apparently, therefore, methods are at fault rather than materials, and the various possible factors are being investigated. Many experimental lengths, each of considerable extent, have been laid on important trunk and other roads. In these experiments every condition of laying has been carefully observed, the work is being kept under close inspection, and important conclusions are hoped for. [1006]

Frictional Properties of Road Surfaces.—For many years complaints have been heard as to slippery roads, but there was no standard by which to measure the qualities of a road in this respect. Some years ago a machine was devised by the M. of T. for this purpose. The device is attached to a motor-vehicle, and has now been in use for a long enough period, on a sufficient variety of surfaces, to prove its ability to give consistent readings. These readings shew clearly and definitely the resistance of a road surface to skidding, and the Ministry is able to set up, at least for its own use, a standard in this respect. [1007]

Impact and Tyre Pressure.—A great deal of work and considerable sums of money have been expended in investigating these problems. The investigation of impact is not completed, and perhaps it will be found difficult to apply the results in practice. Still, it is obvious that a principal cause of damage to roads must be impact, and if the engineer can be informed just what stresses a road must withstand he will be in a better position to design his road. Tyre pressure and impact are closely related. [1008]

The Road Testing Machines.—For the purpose of the two investigations last mentioned it has been necessary to devise and manufacture special apparatus of entirely new type. The most impressive pieces of apparatus are the road-testing machines. They have running tracks up to 100 feet in diameter upon which materials proposed to be tested upon the public roads are first tried out. These machines cost several thousands of pounds to build, but they serve a unique purpose. As the conditions of such a test are more or less artificial, great care is being taken to compare results obtained on the machines with results of similar tests on the roads, and so arrive at a sound conclusion. [1009]

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See TOLLS AND STALLAGES.

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